

DEPARTMENT OF CORRECTIONS

STATE OF KANSAS

**INMATE
RULE BOOK**

Office of the Secretary of Corrections

Revised: June 10, 2019

P-0727

Department of Corrections

REGULATIONS

INMATE CONDUCT, PENALTIES, DISCIPLINE PROCEDURE, DISCIPLINARY
AND ADMINISTRATIVE SEGREGATION, GRIEVANCE PROCEDURE, AND
REPORTING AND CLAIMS PROCEDURE.

ARTICLE 44-12 Through 44-16 of Kansas Administrative Regulations

Office of the SECRETARY OF CORRECTIONS

EFFECTIVE: June 10, 2019

*This book does not include the orders of any warden of any correctional
facility.*

Inmates and Employees, please turn in this book to Unit Team, or your
supervisor, when you no longer live or work here.

THANK YOU

INSTRUCTIONS FOR USE OF THIS BOOK

1 You should read well this entire book and should keep it available for quick reference.

2 From time to time changes may be made. If this happens you will be notified of the change by publication on the bulletin board in each cellhouse or residence facility.

3 Any suggestion you have for changing this book is welcome and may be submitted to the institution director or his legal advisor for review and transmittal to the office of the Secretary. Suggestion should be in writing.

4 When you are released or transferred from this facility please turn in this book before leaving.

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TABLE OF CONTENTS
Inmate Rule Book

44-12.CONDUCT AND PENALTIES

Clothing, Hygiene, Safety, Appearance and Living Quarters

- 44-12-101. Inmate clothing.
- 44-12-102. Personal cleanliness.
- 44-12-103. Tattoos, body piercing, and body markings.
- 44-12-104. Care of living quarters.
- 44-12-105. Unsanitary practices.
- 44-12-106. Hair standards and appearance.
- 44-12-107. Use of safety devices.

Property and Money, Ownership, Possession, Registration, Care and Use

- 44-12-201. Registration and use of personal property.
- 44-12-202. Radios, televisions, musical instruments, and other sound equipment.
- 44-12-203. Theft.
- 44-12-204. Taking without permission.
- 44-12-205. Unauthorized dealing and trading.
- 44-12-206. Debt adjustment or collection prohibited.
- 44-12-207. Gambling and bookmaking.
- 44-12-208. Misuse of state property.
- 44-12-209. Entering into contracts, incurring financial obligations.
- 44-12-210. Accounts.
- 44-12-211. Telephones or other communication devices.
- 44-12-212. Accessing unauthorized computer-based information.

Deportment, Violence, Disruptive Behavior and Riot.

- 44-12-301. Fighting.
- 44-12-302. Noise.
- 44-12-303. Lying.
- 44-12-304. Disobeying orders.
- 44-12-305. Insubordination or disrespect to officers or other employees.
- 44-12-306. Threatening or intimidating any person

- 44-12-307. Avoiding an officer
- 44-12-309. Kitchen utensils and shop tools.
- 44-12-308. Improper use of prepared or served food.
- 44-12-309. Kitchen utensils and shop tools.
- 44-12-310. Misconduct in dining room.
- 44-12-311. Being in a condition of drunken ness, intoxication, state of altered consciousness.
- 44-12-312. Use of stimulants, sedatives, unauthorized drugs, or narcotics, or the misuse, or hoarding of authorized or prescribed medication.
- 44-12-313. Sexually explicit materials.
- 44-12-314. Sexual activity; aggravated sexual activity; sodomy; aggravated sodomy.
- 44-12-315. Lewd acts.
- 44-12-316. Revoked
- 44-12-317. Falsifying documents.
- 44-12-318. Disruptive behavior.
- 44-12-319. Riot or incitement to riot.
- 44-12-320. Revoked
- 44-12-320a. Interfering with official duties.
- 44-12-321. Conduct regarding visitors or the public.
- 44-12-322. Arson.
- 44-12-323. Assault.
- 44-12-324. Battery.
- 44-12-325. Security threat groups: inmate activity; limitations.
- 44-12-326. Revoked
- 44-12-327. Interference with restraints.
- 44-12-328. Undue familiarity.

Assignments To and Performance of Work, Education, Training, or Other Duty

- 44-12-401. Work performance.

Being Present and Accounted For

- 44-12-501. Answering calls or passes.
- 44-12-502. Responsibility for counts.
- 44-12-503. Restricted area and unauthorized presence or out-of-place in assigned domicile.
- 44-12-504. Interference with cell operation and visibility.
- 44-12-505. Restriction.
- 44-12-505b. Medical restriction.
- 44-12-506. Change of name as it appears on journal entry of sentence, convictions.

Inmate Writing and Other Inmate Communications or Publications

- 44-12-601. Mail.
- 44-12-602. Posting notices.

Legal Work, Law Library, Legal Assistance

- 44-12-701. Revoked
- 44-12-702. Legal assistance by inmates.

Administration Publications and Postings

- 44-12-801. Bulletin boards.

Contraband

- 44-12-901. Dangerous contraband.
- 44-12-902. Contraband.
- 44-12-903. Tobacco contraband

Violation of Statutes, Regulations and Orders

- 44-12-1001. Violation of statutes, other regulations, or orders.
- 44-12-1002. Violation of published orders.

Attempt, Conspiracy and Accessory to Commission of Offense

- 44-12-1101. Attempt, conspiracy, accessory, solicitation; liability for offenses of another.

Increased Penalties

- 44-12-1201. Increased penalty for involving or victimizing an inmate under 18.
- 44-12-1202. Conviction of four offenses in six months.

Classification of Offenses and Penalties

- 44-12-1301. Class I offenses.
- 44-12-1302. Class II offenses.
- 44-12-1303. Class III offenses.
- 44-12-1304. Revoked
- 44-12-1305. Use of fines.
- 44-12-1306. Use of restitution.
- 44-12-1307. Fines and restitution, imposition and collection; limits.
- 44-12-1308. Disciplinary segregation; limits.

44-13. DISCIPLINARY PROCEDURE

Procedure Generally

- 44-13-101. Disciplinary procedure established, general description of system.
- 44-13-101a. Waiver of rights.
- 44-13-102. Revoked.
- 44-13-103. Prosecution by outside agency.
- 44-13-104. Revoked
- 44-13-105. The disciplinary administrator.
- 44-13-106. Administration of oaths; designation of persons authorized.
- 44-13-107. Reserved.
- 44-13-108. Reserved.
- 44-13-109. Reserved.
- 44-13-110. Reserved.
- 44-13-111. Reserved.
- 44-13-112. Reserved.
- 44-13-113. Reserved.
- 44-13-114. Reserved.
- 44-13-115. Revoked.

Commencement of Proceedings

- 44-13-201. Disciplinary report and written notice.
- 44-13-201a. Diversion procedure.
- 44-13-201b. Summary judgment procedure.
- 44-13-202. Amendment of the charge.
- 44-13-203. State prosecution and disciplinary hearing.

Nature of Proceedings

- 44-13-301. Revoked.
- 44-13-302. Revoked.
- 44-13-302a. Revoked.
- 44-13-303. Revoked.
- 44-13-304. Revoked.
- 44-13-305. Revoked.
- 44-13-306. Inmate responsibilities.
- 44-13-307. Administrative review of requests for witnesses; denial of requests;
issuance of summons; voluntary nature of witness appearance.

Hearings Generally

- 44-13-401. Hearing within certain time.
- 44-13-401a Notice to inmate; time & place of hearing

- 44-13-402. Continuing the hearing; recesses; time limits; extensions.
- 44-13-403. Conducting the disciplinary hearing.
- 44-13-404. Presence of inmate, and presence of charging officer at disciplinary hearings; officer statements in lieu of testimony.
- 44-13-405. Revoked.
- 44-13-405a. Calling witnesses.
- 44-13-406. Disposition.
- 44-13-407. Revoked
- 44-13-408. Assistance from staff.
- 44-13-409. Standard of proof.

Reports and Records

- 44-13-501. Preservation of all reports.
- 44-13-502. Revoked.
- 44-13-502a. Hearing record.
- 44-13-503. Revoked.
- 44-13-504. Revoked.
- 44-13-505. Copy to the inmate.
- 44-13-506. Preparation of the record in seven days.
- 44-13-507. Docket.
- 44-13-508. Disciplinary reports in file.
- 44-13-509. Disciplinary case log.

Sentences

- 44-13-601. Serving sentence.
- 44-13-602. Time not credited for administrative segregation.
- 44-13-603. Absence from facility.
- 44-13-604. Reserved
- 44-13-605. Reserved
- 44-13-606. Reserved
- 44-13-607. Reserved
- 44-13-608. Reserved
- 44-13-609. Reserved
- 44-13-610. Collection of fines.

Appeals

- 44-13-701. Administrative review.
- 44-13-702. Appeal on the record to the principal administrator of the institution or facility in class III offense cases.
- 44-13-703. Appeal on the record to secretary of corrections in class I and II offense

cases only.

44-13-704. Secretary of corrections' final review on appeal.

44-14. ADMINISTRATIVE AND DISCIPLINARY SEGREGATION

Segregation Generally

44-14-101. Revoked.

44-14-102. Revoked.

Disciplinary Segregation

44-14-201. Revoked.

44-14-202. Revoked.

Administrative Segregation

44-14-301. Revoked.

44-14-302. Revoked.

44-14-303. Revoked.

44-14-304. Revoked.

44-14-305. Revoked.

44-14-305a. Revoked.

44-14-306. Revoked.

44-14-307. Revoked.

44-14-308. Revoked.

44-14-309. Revoked.

44-14-310. Revoked.

44-14-311. Revoked.

44-14-312. Revoked.

44-14-313. Revoked.

44-14-314. Revoked.

44-14-315. Revoked.

44-14-316. Revoked.

44-14-317. Revoked.

44-14-318. Revoked.

44-15. GRIEVANCE PROCEDURE FOR INMATES AND PAROLEES

Procedures Generally

44-15-101. Inmate or parolee grievance procedure; informal resolution; formal levels.

44-15-101a. Grievance procedure distribution; orientation; applicability; remedies;

advisory committee; investigation.

44-15-101b. Time limit for filing grievance.

- 44-15-102. Procedure.
- 44-15-103. Reserved.
- 44-15-104. Reprisals prohibited.
- 44-15-105. Records.
- 44-15-105a. Annual review.
- 44-15-106. Emergency procedure.

Special Procedures

- 44-15-201. Special kinds of problems.
- 44-15-202. Revoked.
- 44-15-203. Ombudsman.
- 44-15-204. Special procedure for sexual abuse grievances; sexual harassment
Grievances and grievances alleging retaliation for filing same; reports of sexual
Abuse or sexual harassment submitted by third parties.
- 44-16-101. Reserved
- 44-16-102. Reporting loss or damage to property.
- 44-16-103. Revoked.
- 44-16-104. Revoked.

44-16. REPORTING AND CLAIMS PROCEDURE FOR LOST OR DAMAGED PROPERTY OR FOR PERSONAL INJURY

- 44-16-104a. Inmate claims for personal injury.
- 44-16-105. Property at own risk.
- 44-16-106. Revoked.
- 44-16-107. Revoked.
- 44-16-108. Revoked.

Article 12.—CONDUCT AND PENALTIES

CLOTHING, HYGIENE, SAFETY, APPEARANCE AND LIVING QUARTERS

44-12-101. Inmate clothing. (a) Turn-in and issuance. Inmates shall turn in all personal clothing upon admission to a facility. Clothing furnished by the state facility shall be worn by all inmates unless exception is granted by the principal administrator with the approval of the secretary of corrections. Inmates shall not wear or have in their possession any other clothing, or clothing in excess of the authorized issue, unless specifically authorized by principal administrator's orders.

(b) Principal administrator's orders. Inmates shall follow the principal administrator's orders in regard to the clothing, care, and handling procedure.

(c) No inmate clothing will be given special treatment at the laundry, clothing distribution room, or elsewhere. Exchange of clothing shall be made according to established schedules and procedures. Inmates shall keep their clothing as neat and clean as conditions permit. Violation of this rule shall be a class III offense. (Authorized by and implementing

K.S.A. 1991 Supp. 75-5210; effective May 1, 1980; amended April 20, 1992.)

44-12-102. Personal cleanliness. Inmates shall shower or bathe a minimum of once a week. Inmates shall brush their teeth a minimum of once a day. Violation of this rule shall be a class III offense. (Authorized by and implementing K.S.A. 1991 Supp. 75-5210; effective May 1, 1980; amended April 20, 1992.)

44-12-103. Tattoos, body piercing, and body markings. (a) Inmates shall not place on or remove from or allow to be placed on or removed from their body any tattoo or body marking, nor shall they place on or remove from the body of another inmate any tattoo or body marking. Removal or alteration of tattoos or body markings shall be performed by a medical officer after written approval has been given by the warden.

(b) Inmates shall not pierce their own bodies or the body of another inmate. Inmates shall not allow their bodies to be pierced by another inmate. Any cosmetic piercing of an inmate's body shall be performed by a physician, dentist, or other medical personnel exempted from licensure requirements according to K.S.A. 65-1941 and amendment thereto, after written approval has been given by the warden. Cosmetic piercing shall be permitted only upon a showing of medical necessity certified by a physician or dentist.

(c) Inmates shall not maintain an existing body piercing hole or opening.

(d) Violation of this regulation shall be a class II offense. (Authorized by and implementing K.S.A. 2005 Supp. 75-5210; effective May 1, 1980; amended Feb.15, 2002; amended July 13, 2007.)

44-12-104. Care of living quarters. Every inmate shall keep his or her living quarters in a neat, clean and sanitary condition. Clothing shall be neatly hung or stored in designated places. Beds shall be made at all times when not in use. Linens shall be exchanged in accordance with the established facility procedures. Wash basins and toilet bowls shall be kept clean. No alteration, painting of, or addition to any assigned quarters or its equipment shall be made without approval according to the orders of the institution or facility. Violation of this rule shall be a class III offense. (Authorized by and implementing K.S.A. 1991 Supp. 75-5210; effective May 1, 1980; amended April 20, 1992.)

44-12-105. Unsanitary practices. (a) No inmate shall throw trash of any kind upon the floors, sidewalks, or grounds of any facility. All rubbish shall be placed in the containers provided for that purpose. No inmate shall spit upon the floors, sidewalks, and grounds or within any facility building. Violation of this subsection shall be a class III offense.

(b) No inmate shall collect, smear, or throw body wastes. No inmate shall urinate or defecate upon the floors, sidewalks, or grounds of any facility. Violation of this subsection shall be a class I offense.

(c) Alternatively, violation of this regulation may be handled according to the summary disposition procedure set forth in K.A.R. 44-13-201b.

(Authorized by and implementing K.S.A. 2006 Supp. 75-5210; effective May 1, 1980; amended April 20, 1992; amended Feb. 15, 2002; amended July 13, 2007.)

44-12-106. Hair standards and appearance. (a) Each inmate shall keep the inmate's hair neat and clean and follow reasonable health and safety standards. When working in food services, each inmate shall wear a cook's hat, or net, or both for sanitary purposes. Inmates working in food services shall not have facial hair in excess of one inch in length or shall wear beard nets, and shall keep this hair neat and clean.

(b) Violation of this regulation shall be a class III offense. (Authorized by and implementing K.S.A. 2006 Supp. 75-5210; effective May 1, 1980; amended May 1, 1987; amended Feb. 15, 2002; amended July 13, 2007.)

44-12-107. Use of safety devices. Each inmate shall use safety devices provided in accordance with the orders of the warden. Violation of this regulation shall be a class II offense. Alternatively, violation of this regulation may be handled according to the summary disposition procedure set forth in K.A.R. 44-13-201b. (Authorized by and implementing K.S.A. 2006 Supp. 75-5210; effective May 1, 1980; amended Feb. 15, 2002; amended July 13, 2007.)

PROPERTY AND MONEY: OWNERSHIP, POSSESSION, REGISTRATION, CARE AND USE

44-12-201. Registration and use of personal property. (a) It shall be the

responsibility of each inmate to make certain that any items of personal property in the inmate's possession as designated by department of corrections internal management policy and procedure or orders of the warden are properly registered. Each inmate shall be required, upon demand, to produce any personal property registered in the inmate's name or issued to the inmate, unless previously reported lost according to proper procedure.

(b) Violation of this regulation shall be a class II offense.

This amendment shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 75-5210; effective May 1, 1980; amended May 1, 1981; amended April 20, 1992; amended February 15, 2002.)

44-12-202. Radios, televisions, musical instruments, and other sound equipment. (a) All personal radios, televisions, and other electronic sound equipment shall be played only in accordance with the orders of the warden. The size, type, and capacity of this equipment shall be limited by internal management policies and procedures issued by the secretary of corrections. All such equipment, including all musical instruments, shall be possessed and used in accordance with the orders of the warden.

(b) Violation of this regulation shall be a class III offense.

This amendment shall be effective on and after February 15, 2002. (Authorized by and implementing 75-5210; effective May 1, 1980; amended May 1, 1981; amended May 1, 1985; amended April 20, 1992; amended February 15, 2002.)

44-12-203. Theft. (a) Theft shall include any of the following acts done with intent to deprive the owner permanently of the possession, use, or benefit of the owner's property or services:

- (1) Obtaining or exerting unauthorized control over property or services;
- (2) obtaining, by deception, control over property or services;
- (3) obtaining, by threat, control over property or services; or
- (4) obtaining control over stolen property or services and knowing the property or services to have been stolen by another.

(b) Violation of this regulation shall be a class I offense.

This amendment shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 75-5210; effective May 1, 1980; amended February 15, 2002.)

44-12-204. Taking without permission. (a) No inmate shall take without permission, regardless of the intent, articles of any kind from any other person or place, nor shall the inmate obtain these articles by fraud or dishonesty.

(b) Violation of this regulation shall be a class II offense. Alternatively, violation of this regulation may be handled according to the summary disposition procedure set forth in K.A.R. 44-13-201b.

This amendment shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 75-5210; effective May 1, 1980; amended April 20, 1992; amended February 15, 2002.)

44-12-205. Unauthorized dealing and trading. (a) Trading, borrowing, loaning, giving, receiving, selling, and buying goods, services, or any item with economic value between or among inmates without written permission of the warden or designee shall be prohibited.

(b) Violation of this regulation shall be a class II offense. Alternatively, violation of this regulation may be handled according to the summary disposition procedure set forth in K.A.R. 44-13-201b.

This amendment shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 75-5210; effective May 1, 1980; amended May 1, 1988; amended April 20, 1992; amended February 15, 2002.)

44-12-206. Debt adjustment or collection prohibited. All debt adjustment or collection among inmates is strictly prohibited. Violation of this rule shall be a class II offense. (Authorized by and implementing K.S.A. 1979 Supp. 75-5210(f); effective May 1, 1980.)

44-12-207. Gambling and bookmaking. An inmate shall not make any bet, operate or bank any gambling pool or game, keep book, or engage in any form of gambling. An inmate shall not possess, transfer, sell, distribute, nor obtain dice or other gambling paraphernalia. An inmate shall not receive, possess, distribute, sell, nor transfer lottery tickets. Violation of this rule shall be a class II offense. (Authorized by and implementing K.S.A. 75-5210; effective May 1, 1980; amended May 1, 1988.)

44-12-208. Misuse of state property. No inmate shall destroy, damage, deface, alter, misuse, or fail to return when due any article of property owned by the state, whether issued by the department of corrections or another state agency, including clothing and shoes. Normal wear and tear to clothing and shoes shall be excepted from this regulation. Violation of this regulation shall be a class II offense. (Authorized by and implementing K.S.A. 2005 Supp. 75-5210; effective May 1, 1980; amended April 20, 1992; amended July 13, 2007.)

44-12-209. Entering into contracts, incurring financial obligations. No inmate shall enter into a contract, or incur any financial obligation, including orders by mail, without the principal administrator's approval. Violation of this rule shall be a class III offense. (Authorized by and implementing K.S.A. 1991 Supp. 75-5210; effective May 1, 1980; amended May 1, 1981; amended April 20, 1992.)

44-12-210. Accounts. No inmate shall establish or have access to any

checking or savings account outside the trust fund while confined in a correctional facility. Violation of this regulation shall be a class II offense. (Authorized by K.S.A. 2005 Supp. 75-5210; implementing K.S.A. 2006 Supp. 75-5210, K.S.A.75-5251; effective May 1, 1980; amended May 1, 1981; amended February 15, 2002; amended July 13, 2007.)

44-12-211. Telephones or other communication devices. (a) When using any authorized inmate telephone, no inmate shall perform or engage in any of the following:

- (1) Use another inmate's personalized identification number (PIN) or permit another inmate to use the inmate's PIN;
 - (2) be a party to call forwarding;
 - (3) call any telephone number not listed on the inmate's authorized calling list;
 - (4) participate in any call involving a party at a phone number other than that originally called, including receiving information relayed by an intermediary, and either relaying or receiving information over any telephone service other than that authorized by the secretary of corrections for inmate usage;
 - (5) initiate any call to a party on the inmate's authorized calling list and then permit the telephone to be used by another inmate, whether in speaking to the authorized party or to another party;
 - (6) use the telephone in furtherance of any illegal activity; or
 - (7) use the telephone to communicate or attempt to communicate with a minor, unless correspondence with the minor is authorized by K.A.R. 44-12-601.
- (b) Except as specified in subsection (a), the use or possession of any telephone or any communication device by an inmate without the permission of the warden or warden's designee shall be prohibited.
- (c) For purposes of this regulation, "minor" shall mean a person under the age of 18.
- (d) Violation of this regulation shall be a class I offense. (Authorized by and implementing K.S.A. 2013 Supp. 75-5210; effective July 13, 2007; amended June 20, 2014.)

44-12-212. Accessing unauthorized computer-based information. (a) No inmate shall perform any of the following:

- (1) Access, or attempt to access, any information, data, images, or other material residing on or stored in any computer or available through any computer network, unless the information, data, images, or other material has been authorized for inmate access by the secretary of corrections and established and maintained by the information technology division of the department of corrections for that purpose;
- (2) communicate or attempt to communicate with a minor through any computer or computer network, unless correspondence with the minor is authorized by K.A.R. 44-12-601; or

(3) communicate or attempt to communicate with any person through use of another inmate's authorized electronic mail account.

(b) For purposes of this regulation, "minor" shall mean a person under the age of 18.

(c) Violation of this regulation shall be a class I offense. (Authorized by and implementing K.S.A. 2013 Supp. 75-5210; effective July 13, 2007; amended June 20, 2014.)

DEPARTMENT, VIOLENCE, DISRUPTIVE BEHAVIOR AND RIOT

44-12-301. Fighting. (a) Fighting or any other activity that constitutes violence or is likely to lead to violence shall be prohibited.

(b) It shall be an affirmative defense, for which the offender shall bear the sole burden of proof, if the offender is engaged in self-defense.

(c) Violation of this regulation shall be a class I offense. (Authorized by and implementing K.S.A. 2015 Supp. 75-5210; effective May 1, 1980; amended April 20, 1992; amended, T-44-8-16-16, Aug. 16, 2016; amended Nov. 4, 2016.)

44-12-302. Noise. Inappropriate booing, whistling, shouting, or other loud and disturbing noises are not permitted. Violation of this rule shall be a class III offense. (Authorized by K.S.A. 1979 Supp. 75-5210, 75-5210(f); effective May 1, 1980.)

44-12-303. Lying. (a) Every inmate shall speak the truth. No inmate shall lie, misrepresent the facts, mislead, or give false or misleading information to an officer, employee, or any other person assigned to supervise inmates or others having a right to know. No inmate shall make any false allegations against any officer, employee, inmate, or other person.

(b) Violation of this regulation shall be a class II offense. Alternatively, violation of this regulation may be handled according to the summary disposition procedure set forth in K.A.R. 44-13-201b.

This amendment shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 75-5210; effective May 1, 1980; amended February 15, 2002.)

44-12-304. Disobeying orders. (a) Each inmate shall promptly and respectfully obey any order, directive, or instruction given to the inmate by any employee of the facility, or by an employee of any other agency or of an organization or firm in charge of the inmate. In case of conflicting orders, the last order shall be obeyed.

(b) If an order is violated, the specific circumstances surrounding the violation charge shall be included in the following:

(1) The disciplinary report bringing the charge;

(2) the investigation report, if any; and

(3) if used, the report writer's written statement in lieu of testimony.

(c) Violation of this regulation shall be a class I offense. (Authorized by and implementing K.S.A. 2005 Supp. 75-5210; effective, May 1, 1980; amended, T-83-23, Aug. 11, 1982; amended, T-84-1, Jan. 5, 1983; amended May 1, 1984; amended May 1, 1987; amended July 13, 2007.)

44-12-305. Insubordination or disrespect to officers or other employees. (a) Each inmate shall be attentive and respectful towards employees, visitors, and officials. The showing of disrespect, directly or indirectly, or being argumentative in any manner shall be considered insubordination. This regulation shall exclude an initial exchange or discussion in a civilized tone for the purpose of clarification of the order if the exchange or discussion is not disrespectful or argumentative.

(b) Violation of this regulation shall be a class II offense. Alternatively, violation of this regulation may be handled according to the summary disposition procedure set forth in K.A.R. 44-13-201b.

This amendment shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 75-5210; effective May 1, 1980; amended February 15, 2002.)

44-12-306. Threatening or intimidating any person. (a) An inmate shall not threaten or intimidate, either directly or indirectly, any person or organization. This regulation shall specifically prohibit conditional threats or intimidation. Violation of this subsection shall be a class I offense.

(b) A civilized warning by the inmate that the inmate may properly use legal process to enforce rights or redress wrongs, including use of the inmate grievance procedure, shall not be considered a violation of this regulation.

(c) The subjective impression of the target of the alleged threat or intimidation shall not be a factor in proving a violation of subsection (a). (Authorized by and implementing K.S.A. 2006 Supp. 75-5210; effective May 1, 1980; amended May 1, 1984; amended May 1, 1986; amended Feb. 15, 2002; amended July 13, 2007.)

44-12-307. Avoiding an officer. No inmate shall run from or deliberately avoid any officer, supervisor, or employee if required, ordered, or requested to be present to talk with, be accounted for, be searched, or be questioned by the officer, supervisor, or employee. Violation of this regulation shall be a class I offense.

This amendment shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 75-5210; effective May 1, 1980; amended April 20, 1992; amended February 15, 2002.)

44-12-308. Improper use of prepared or served food. No inmate shall accept more prepared or served food or drink than the inmate will

consume. No inmate shall wastefully and deliberately destroy prepared or served food. Inmates shall not carry any prepared or served food or drink from the dining area, except as allowed under the facility orders. Violation of this regulation shall be a class III offense.

(Authorized by and implementing K.S.A. 2006 Supp. 75-5210; effective May 1, 1980; amended April 20, 1992; amended July 13, 2007.)

44-12-309. Kitchen utensils and shop tools. (a) No inmate shall remove or have in possession any eating or cooking utensils or tools without proper authorization.

(b) Violation of this regulation shall be a class II offense. However, possession of utensils or tools may be considered possession of dangerous contraband and punishable as a class I offense. Alternatively, violation of this regulation may be handled according to the summary disposition procedure set forth in K.A.R. 44-13-201b. This amendment shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 75-5210; effective May 1, 1980; amended April 20, 1992; amended February 15, 2002.)

44-12-310. Misconduct in dining room. (a) All inmates shall enter and leave the dining room in accordance with the established procedure at each facility and shall conduct themselves in an orderly manner while in the dining room.

(b) Violation of this regulation shall be a class II offense. Alternatively, violation of this regulation may be handled according to the summary disposition procedure set forth in K.A.R. 44-13-201b.

This amendment shall be effective on and after February 15, 2002. (Authorized by K.S.A. 75-5210; implementing K.S.A. 75-5210, 75-5251; effective May 1, 1980; amended February 15, 2002.)

44-12-311. Being in a condition of drunkenness, intoxication, state of altered consciousness. No inmate shall at any time be drunk, intoxicated, or be in a chemically induced state of altered consciousness. Violation of this rule shall be a class I offense. (Authorized by K.S.A. 1979 Supp. 755210, 75-5210(f); effective May 1, 1980.)

44-12-312. Use of stimulants, sedatives, unauthorized drugs, or narcotics, or the misuse or hoarding of authorized or prescribed medication. (a) No inmate shall take into the bodily system any kind of substance that is capable of producing intoxication, hallucination, stimulation, depression, dizziness, or other alteration of the inmate's state of consciousness or feeling, except approved foods, including coffee and tea, and legal drugs, including medication properly and legally prescribed or authorized for a specific inmate by an authorized licensed physician. Alcohol in any form shall be specifically declared not to be an approved food or drink unless it is a component of authorized or prescribed medication.

(b) Misusing, hoarding, tampering with, or defacing any authorized or

prescribed medication shall be prohibited.

(1) "Misusing" medication shall mean using any medication for a purpose other than that for which the medication was specifically authorized or prescribed. This shall include either of the following:

(A) Keeping the medication beyond the stop date, as designated by the health care provider; or

(B) dealing and trading prescribed medications within the meaning of K.A.R. 44-12-205.

(2) "Hoarding" medication shall mean having possession or control of or holding any quantity of authorized or prescribed medication greater than an amount or dosage that has been issued to the inmate by medical staff, or greater than the amount that should be remaining if the inmate has taken the medication in accordance with the prescription and instructions from medical staff. Approved over-the-counter medications shall be purchased and possessed only in reasonably consumable quantities.

(3) "Tampering with or defacing" shall mean altering or disfiguring the original packaging of a medication, or removing the medication from the original packaging to any other bottle or container.

(c) No inmate shall leave the infirmary or any area where medication is issued while in possession or control of any medication unless removal of the medication from this area has been authorized by medical staff.

(d) Each of the following by an inmate shall create a presumption that the inmate has used a substance prohibited for consumption by this regulation and shall constitute a violation of this regulation:

(1) Refusal to provide a urine sample or other sample of bodily fluid or tissue pursuant to an authorized alternate substance abuse testing method;

(2) failure to provide a urine sample or other sample of bodily fluid or tissue of sufficient quantity; or

(3) failure to provide any sample of urine, bodily fluid, or tissue within two and one-half hours. A bona fide medical or psychological condition verified by a duly licensed practitioner that prevents or hampers the provision of any sample within a period of two and one-half hours shall constitute a defense to this charge.

(e) Violation of this regulation shall be a class I offense. (Authorized by and implementing K.S.A. 2006 Supp. 75-5210; effective May 1, 1980; amended April 20, 1992; amended Feb. 15, 2002; amended July 13, 2007.)

44-12-313. Sexually explicit materials. (a) No inmate shall have in possession or under control any sexually explicit materials, including drawings, paintings, writing, pictures, items, and devices.

(b) The material shall be considered sexually explicit if the purpose of the material is sexual arousal or gratification and the material meets either of the following conditions:

(1) Contains nudity, which shall be defined as the depiction or display of any state of undress in which the human genitals, pubic region, buttock, or female breast at a point below the top of the areola is less than completely and opaquely

covered; or

(2) contains any display, actual or simulated, or description of any of the following:

(A) Sexual intercourse or sodomy, including genital-genital, oral-genital, anal-genital, and anal-oral contact, whether between persons of the same or differing gender;

(B) masturbation;

(C) bestiality; or

(D) sadomasochistic abuse.

(c) Each violation of this regulation by inmates classified as sex offenders shall be a class I violation.

(d) Each violation of this regulation by inmates not classified as sex offenders shall be a class II violation.

(e) Each violation of this regulation by any inmate if the sexually explicit material depicts, describes, or exploits any child under the age of 18 years shall be a class I offense. (Authorized by and implementing K.S.A. 2003 Supp. 75-5210; effective May 1, 1980; amended April 20, 1992; amended Feb. 15, 2002; amended, T-443-19-04, March 19, 2004; amended July 2, 2004.)

44-12-314. Sexual activity; aggravated sexual activity; sodomy; aggravated sodomy.

(a) No inmate shall commit or induce others to commit an act of sexual intercourse or sodomy even with the consent of both parties. Participation in such an act shall be prohibited.

(b) No inmate shall force or intimidate another person to engage in sexual intercourse or sodomy. No inmate shall solicitor arrange for the application of force or intimidation by another person in order to engage in sexual intercourse or sodomy with another person. No inmate shall participate in any scheme or arrangement to force or intimidate another person to engage in sexual intercourse or sodomy.

(c) (1) Sexual intercourse shall mean any penetration of the female sex organ by a finger, the male sex organ, or any object. Any penetration, however slight, shall be deemed sufficient to constitute sexual intercourse.

(2) Sodomy shall be defined as any of the following:

(A) Oral contact with or oral penetration of the female genitalia or oral contact with the male genitalia;

(B) anal penetration, however slight, of a male or female by any body part or object; or

(C) oral or anal copulation or sexual intercourse between a person and an animal.

(d) Violation of this regulation shall be a class I offense.

This amendment shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 75-5210,75-5251; effective May 1, 1980; amended May 1, 1984; amended April 20, 1992; amended February 15, 2002.)

44-12-315. Lewd acts. (a) No inmate shall engage in a lewd or lascivious

manner in any act of kissing, fondling, touching, or embracing, whether with a person of the same or opposite sex.

(b) An inmate shall not intentionally expose or manipulate a sex organ with the knowledge or reasonable anticipation that the inmate will be viewed by others or with the intent to arouse or gratify the sexual desires of the inmate or another. A violation of this regulation shall be a class I offense. (Authorized by and implementing

K.S.A. 2006 Supp. 75-5210; effective May 1, 1980; amended May1, 1981; amended April 20, 1992; amended July 13, 2007.)

44-12-316. (Authorized by and implementing K.S.A. 1982 Supp. 75-5210; effective May 1, 1980; amended May 1, 1984; revoked April 20, 1992.)

44-12-317. Falsifying documents. No inmate shall falsify any document. Violation of this rule shall be a class II offense. (Authorized by and implementing K.S.A. 1991 Supp. 75-5210; effective May 1, 1980; amended April 20, 1992.)

44-12-318. Disruptive behavior.

(a) No inmate shall start or get others to start, or perform or participate in, or help others to perform or participate in any disruptive behavior.

(b) Violation of this regulation shall be a class II offense. Alternatively, violation of this regulation may be handled according to the summary disposition procedure set forth in K.A.R. 4413-201b.

This amendment shall be effective on and after February 15, 2002. (Authorized by K.S.A. 75-5210; implementing K.S.A. 75-5210, 75-5251; effective May 1, 1980; amended February 15, 2002.)

44-12-319. Riot or incitement to riot. (a) Riot is any use of force or violence by three or more persons acting together and without the authority of law which produces a breach of the peace on the premises of a correctional facility whether within or without the security perimeter itself, or any threat to use such force or violence against any person or property, if accompanied by power or apparent power of immediate execution.

(b) Incitement to riot is urging others by words or conduct to engage in riot under circumstances which produce a clear and present danger of injury to persons or property, or a breach of the peace. Violation of this rule shall be a class I offense. (Authorized by and implementing K.S.A. 1991 Supp. 75-5210; effective May 1, 1980; amended April 20, 1992.)

44-12-320a. Interfering with official duties. No inmate shall intentionally disrupt, sabotage, impede, or interfere with the performance of official duties by any officer, employee, or contract employee. Violation of this regulation shall be a class I offense.

(Authorized by a implementing K.S.A. 2006 Supp. 75-5210; effective July 13, 2007.)

44-12-321. Conduct regarding visitors or the public. (a) Each inmate shall treat visitors and members of the public in a respectful and helpful manner. Each inmate shall comply with the orders of the warden regarding contact with visitors and the public and shall maintain a dignified and respectful demeanor while in the presence of these individuals.

(b) Violation of this regulation shall be a class II offense.

This amendment shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 75-5210; effective May 1, 1980; amended April 20, 1992; amended February 15, 2002.)

44-12-322. Arson. Arson is knowingly, by means of fire or explosive, damaging any property. Violation of this rule shall be a class I offense. (Authorized by K.S.A. 1979 Supp. 75-5210, 75-5210(f); effective May 1, 1980.)

44-12-323. Assault. An assault is an intentional threat or attempt to do bodily harm to another, coupled with apparent or recognizable ability to carry out the threat or attempt, and resulting in immediate apprehension or fear of bodily harm. No bodily contact is necessary. Violation shall be a class I offense. (Authorized by and implementing K.S.A. 1991 Supp. 75-5210; effective May 1, 1980; amended April 20, 1992.)

44-12-324. Battery. Battery is the unlawful or unauthorized, intentional touching or application of force to the person of another, when done in a rude, insolent, or angry manner. Violation of this rule shall be a class I offense. (Authorized by and implementing K.S.A. 1991 Supp. 75-5210; effective May 1, 1980; amended April 20, 1992.)

44-12-325. Security threat groups; inmate activity; limitations.

(a) No proselytizing of religious faiths or beliefs shall be allowed in the facilities. "Proselytizing" shall be defined as an active effort to persuade a person to convert to a religious belief without the person's prior consent. However, nothing in this regulation shall prohibit one-to-one conversation about religious matters. Violation of this subsection shall be a class III offense.

(b) Inmates shall not serve in the capacity of clergy or religious instructors at any time except for purposes of K.A.R. 44-7-113, on recommendation of chaplain and the approval of the warden. Violation of this subsection shall be a class III offense.

(c) Inmates shall not develop, organize, promote, or assist any security threat group and shall not engage in any activity calculated to incite a demonstration by any security threat group. Inmates shall not possess any item, whether in its original condition or in an altered state, associated or identified with any security threat group. "Security threat group" shall mean any ongoing formal or informal organization, association, or group of three or more persons with a common name or identifying sign or symbol,

but without specific approval by the warden. Violation of this subsection shall be a class I offense. (Authorized by and implementing K.S.A. 2005 Supp. 75-5210; effective May 1, 1980; amended May 1, 1981; amended April 20, 1992; amended Feb. 15, 2002; amended July 13, 2007.)

44-12-326. This revocation shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 1990 Supp. 75-5210; effective, T-84-32, Nov. 23, 1983; effective May 1, 1984; amended April 20, 1992; revoked February 15, 2002.)

44-12-327. Interference with restraints. (a) No inmate shall interfere with or assist other inmates in interfering in any way with handcuffs or other restraints that have been, or are being, applied to the inmate by an officer or employee. An inmate shall not remove or attempt to remove that inmate or another inmate from handcuffs or other restraints without approval of an officer or employee.

(b) Violation of this regulation shall be a class I offense. This amendment shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 75-5210; effective May 1, 1988; amended February 15, 2002.)

44-12-328. Undue familiarity. (a) No inmate shall solicit, encourage, establish, or participate in any type of personal relationship with any staff member, contract personnel, volunteer, or employee of any other organization in charge of the inmate. A personal relationship shall be defined as any relationship involving unnecessary familiarity by the inmate toward any such individual. Any contact between an inmate and staff member other than a polite exchange of remarks or casual conversation shall be limited to that contact necessary to allow any such individual to carry out official duties and provide authorized assistance to the inmate in a professional manner.

(b) Violation of this regulation shall be a class I offense. This amendment shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 75-5210; effective April 20, 1992; amended February 15, 2002.)

ASSIGNMENTS TO AND PERFORMANCE OF WORK, EDUCATION, TRAINING, OR OTHER DUTY

44-12-401. Work performance. (a) No inmate shall intentionally interfere with, delay, or disrupt work in progress, or sabotage the work, machinery, systems, or products, nor shall any inmate assist or participate in these actions. Violation of this subsection shall be a class I offense.

(b) Each inmate shall perform work assigned in the manner prescribed and according to the directives of the inmate's supervisor or other authorized official. Intentional failure to report to or depart from work at the

prescribed time and without unnecessary delay en route shall be prohibited. Violation of this subsection shall be a class II offense.

Alternatively, violation of this subsection may be handled according to the summary disposition procedure set forth in K.A.R. 44-13-201b.

(c) No inmate shall slow the work progress through carelessness or neglect. Violation of this subsection shall be a class II offense. Alternatively, violation of this subsection may be handled according to the summary disposition procedure set forth in K.A.R. 44-13-201b.

(d) No inmate shall be tardy for work. Violation of this subsection shall be a class III offense.

(e) "Work," as used in this regulation, shall include any work assignment, educational, vocational, treatment, or training program to which an inmate has been assigned. This amendment shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 75-5210; effective May 1, 1980; amended May 1, 1988; amended April 20, 1992; amended February 15, 2002.)

BEING PRESENT AND ACCOUNTED FOR

44-12-501. Answering calls or passes.

(a) Each inmate shall respond promptly to all calls made for the inmate and shall move from place to place as required by the orders of the facility. No inmate shall destroy a pass issued to that inmate. Each inmate shall present a pass to the proper person at the time and place indicated on the pass.

(b) Violation of this regulation shall be a class III offense.

This amendment shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 75-5210; effective May 1, 1980; amended April 20, 1992; amended February 15, 2002.)

44-12-502. Responsibility for counts. Every inmate shall be present at the proper time and place of counts, in accordance with the orders of the principal administrator. Causing a delay that renders the count inaccurate or more difficult, or failure to be present during the count process shall be considered as fouling count. Violation of this rule shall be a class I offense. (Authorized by and implementing K.S.A. 1991 Supp. 75-5210; effective May 1, 1980; amended April 20, 1992.)

44-12-503. Restricted area and unauthorized presence or out-of-place in assigned domicile. (a) Restricted area. Each inmate shall be aware of all restricted areas. No inmate shall enter a restricted area without a direct order by a correctional employee authorized to render this order or unless expressly permitted in writing by the warden, Violation of this subsection shall be a class II offense. Alternatively, violation of this subsection may be

handled according to the summary disposition procedure set forth in K.A.R. 44-13-201b.

(b) Unauthorized presence. No inmate shall be present in any area without authorization. If a pass is required, the inmate shall show the pass when required to do so. Specific permission or authorization, whether verbal or written, shall be required for an inmate to be present at any location at any time. Violation of this subsection shall be a class III offense.

(c) Out-of-place in assigned domicile. An inmate shall not roam about in the housing unit and shall not be any place in the housing unit without permission of the unit team. This subsection shall apply to conditions where the inmate's presence generally in the living unit itself is otherwise authorized. Violation of this subsection shall be a class III offense. This amendment shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 75-5210; effective May 1, 1980; amended April 20, 1992; amended February 15, 2002.)

44-12-504. Interference with cell operation and visibility. (a) No inmate shall block or otherwise interfere with the operation of the cell opening and closing mechanism in any way including food passage ports or slots. No inmate shall cover the inmate's cell, including food passage ports or slots, so as to block visibility into the cell, except as allowed by the warden's orders.

(b) Violation of this regulation shall be a class I offense.

This amendment shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 75-5210; effective May 1, 1980; amended May 1, 1987; amended February 15, 2002.)

44-12-505. Restriction. No inmate shall avoid, break or violate the terms of a restriction which has been imposed upon him or her. Violation of this rule shall be a class II offense. (Authorized by K.S.A. 1979 Supp. 75-5210, 75-5210(f); effective May 1, 1980.)

44-12-505b. Medical restriction. In order not to aggravate any injury, illness, or other medical condition, no inmate shall participate in any work or recreational activities, or partake of food items, in violation of a documented medical restriction that the inmate has received. Violation of this regulation shall be a class III offense.

This amendment shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 75-5210; effective April 20, 1992; amended February 15, 2002.)

44-12-506. Change of name as it appears on journal entry of sentence, convictions. In all matters an inmate shall respond to officials when addressed by the name under which he or she was committed to the custody of the secretary of corrections until discharged from sentence. An inmate shall be referred to in all official transactions, and all correspondence to and

from the inmate, under the name used in the journal entry of convictions and commitment throughout his or her period of incarceration. In the event of a legal name change, the records may reflect the new name as an alias and the inmate may use the alias name in parentheses after the conviction name. All directives to, references to, or orders to an inmate by his or her convicted name shall be complied with regardless of the fact that he or she may have changed his or her name. No charge shall be made against any inmate under this rule because the inmate is the addressee of any mail, phone call, document or other communication under the non-conviction name unless it is alleged and proven that the inmate was knowing and willing conspirator or instigator of such use of non-conviction name. Violation of this rule shall be a class II offense. (Authorized by K.S.A. 1979 Supp. 75-5210, 75-5210(f); effective May 1, 1980.)

INMATE WRITING AND OTHER INMATE COMMUNICATIONS OR PUBLICATIONS

44-12-601. Mail. (a) Definitions.

(1)(A) "Legal mail" means mail affecting the inmate's right of access to the courts or legal counsel. This term shall be limited to letters between the inmate and any lawyer, a judge, a clerk of a court, or any intern or employee of a lawyer or law firm, legal clinic, or legal services organization, including legal services for prisoners.

(B) "Official mail" means any mail between an inmate and an official of the state or federal government who has authority to control, or to obtain or conduct an investigation of, the custody or conditions of confinement of the inmate.

(C) "Privileged mail" means any mail between the inmate and the inmate's physician, psychiatrist, psychologist, or other licensed mental health therapist.

(2)(A) "Censor" means to remove or change any part or all of the correspondence or literature.

(B) "Inspect" means to open, shake out, look through, feel, or otherwise check for contraband without reading or censoring. This term shall include any cursory reading necessary to verify that mail is legal or official in nature as permitted by paragraph (f)(3).

(C) "Read" means to read the contents of correspondence or literature to ascertain the content.

(3) "Minor" means a person under the age of 18.

(4) "Bodily substance" means blood, fecal matter, nasal or sinus mucous or secretions, perspiration, saliva, semen, skin or other tissue, sputum, tears, urine, or vaginal secretions.

(b) General provisions.

(1) Each inmate shall comply with the mail procedures and restrictions established by the order of the warden of the facility. Failure to comply with mail procedures or restrictions, or circumventing or attempting to

circumvent mail procedures or restrictions by any means, shall be prohibited. The delivery of mail through an employee, volunteer, teacher, or any other person who is not authorized to perform functions related to the established mail-handling system shall be prohibited.

(2) Contraband. Items identified as contraband shall be dealt with as provided in subsection (d) and then either returned to the sender at the inmate's expense or destroyed, at the inmate's option. Items illegal under Kansas or U.S. federal law shall be seized and held as evidence for other law enforcement officers.

(3) All incoming mail shall identify the inmate recipient by name and inmate identification number.

(4) Violation of mail regulations of the department of corrections, orders of the warden, or the laws of Kansas or the United States may result in additional mail restrictions upon the offender that are sufficient to prevent the continuation or reoccurrence of the violation.

(5) All funds sent for deposit to an inmate's trust account shall be in the form of an electronic funds transfer sent through an entity under contract with the department of corrections to conduct those transactions. These funds shall be sent to the centralized banking location or individual work release location designated by the secretary. All other funds sent for deposit to an inmate's trust account, other than governmental checks, warrants, and worker's compensation benefit checks, shall be returned immediately to the sender, and the intended inmate recipient shall be so notified in writing, without need of formal censorship. Except for correspondence qualifying as legal mail in which funds are enclosed in an envelope clearly marked as such, correspondence or other material sent with funds shall not be forwarded and shall be discarded.

(6) Any incoming or outgoing mail other than legal, official, or privileged mail may be inspected or read at any time.

(7) Incoming mail addressed solely to a specific inmate and not otherwise subject to censorship shall be delivered regardless of whether the mail is sent free of charge or at a reduced rate. All incoming mail shall nonetheless bear the sender's name and address on the envelope, or this mail shall not be delivered and shall be immediately destroyed.

(8) Any outgoing first-class letters may be sent to as many people and to whomever the inmate chooses, subject to the restrictions in this regulation.

(9) Outgoing inmate mail shall bear the full conviction name, inmate number, and address of the sender, and the name and address of the intended recipient. No other words, drawings, or messages shall be placed on the outside of the envelope or package by an inmate except words describing the mail as being legal, official, privileged, or intended to aid postal officials in delivery of the item. Outgoing inmate mail shall be stamped by the facility to indicate that it was mailed from a facility operated by the department of corrections and that it has not been censored.

(10) Inmates shall not correspond with any person, either directly or through third parties, who has filed a written objection to the correspondence with

the director of victim services in the department of corrections central office. The director of victim services in the department of corrections central office shall notify the warden of the facility where the offender is incarcerated of any written objections to correspondence sent by the offender within three business days of its receipt.

(A) The inmate shall be notified of the objection in writing when it is received, but shall not be required to be informed of the exact contents of the objection.

(B) Orders shall be developed by the warden of each facility to prevent further correspondence from being sent to those who have filed an objection.

(C) This regulation shall not prevent an inmate from writing to the inmate's natural or adoptive child, unless the child was the victim of the crime for which the inmate is incarcerated, the person having legal custody of the child files a written objection with the director of victim services in the department of corrections central office, and the inmate has not obtained a court order permitting this written communication with the child. The director of victim services in the department of corrections shall inform the warden of the facility where the inmate is assigned of any objection from the person having legal custody of the child within three business days of its receipt.

(11)(A) No inmate shall correspond with a minor, either directly or through any third party, unless one of the following conditions is met:

(i) A parent or legal guardian of the minor has filed written authorization for the correspondence between the inmate and the minor with the director of victim services in the department of corrections central office.

(ii) If the minor is the inmate's natural or adoptive child, the correspondence is authorized pursuant to paragraph (b)(10)(C), and the inmate has registered the child by providing the name, date of birth, and address of the natural or adoptive child to the director of victim services.

(B) The director of victim services shall notify the warden of the facility where the inmate is incarcerated of any written authorization for correspondence with a minor who is not the natural or adoptive child of the inmate, as well as the registration information of the inmate's natural or adoptive child.

(12) An inmate shall not mail or attempt to mail any of the following:

(A) Any bodily substance;

(B) a substance represented by the inmate as being a bodily substance; or

(C) a substance that a reasonable person would conclude is a bodily substance.

(c) Legal, official, and privileged mail.

(1) Subject to the provisions of paragraph (f)(3), outgoing privileged, official, or legal mail sent by any inmate shall be opened and read only upon authorization of the warden for good cause shown. However, if any inmate threatens or terrorizes any person through this mail, any subsequent mail, including official or legal mail, from the inmate to the person threatened or terrorized may, at the request of that person, be read and censored for a time

period and to the extent necessary to remedy the abuse.

(2) Incoming mail clearly identified as legal, official, or privileged mail shall be opened only in the inmate's presence. This mail shall be inspected for contraband but shall not be read or censored, unless authorized by the warden based upon a documented previous abuse of the right or other good cause.

(3) All legal mail and official mail shall be indefinitely forwarded to the inmate's last known address. If any mail is returned to a facility as undeliverable when sent to the inmate's last known address, the mail shall be returned to the sender with a notice that the mail was forwarded unsuccessfully and is now returned to the sender for further disposition.

(d) Censorship grounds and procedures.

(1) Incoming or outgoing mail, other than legal, official, or privileged mail, may be censored only when there is reasonable belief in any of the following:

(A) There is a threat to institutional safety, order, or security.

(B) There is a threat to the safety and security of public officials or the general public.

(C) The mail is being used in furtherance of illegal activities.

(D) The mail is correspondence between offenders, including any former inmate regardless of current custodial status, that has not been authorized according to subsection (e). Correspondence between offenders may be inspected or read at any time.

(E) The mail contains sexually explicit material, as defined and proscribed by K.A.R. 44-12-313.

(2) If any communication to or from an inmate is censored, all of the following requirements shall be met:

(A) Each inmate shall be given a written notice of the censorship and the reason for the censorship, without disclosing the censored material.

(B) Each inmate shall be given the name and address of the sender of incoming mail, if known, or the addressee of outgoing mail and the date the item was received in the mail room. Notice of the censorship of correspondence by the facility shall be provided to the sender, if known, by staff in the facility's mail room within three business days of the decision to censor.

(C) The author or addressee of the censored correspondence shall have 15 business days from the date of the notice of censorship to protest that decision.

(D) All protests shall be forwarded to the secretary of corrections or the secretary's designee for final review and disposition.

(E) Each inmate shall have the option of having censored correspondence or other materials in their entirety either mailed out at the expense of the inmate or discarded.

(e) Offender correspondence with other offenders.

Offenders sentenced to the custody of the Kansas department of corrections shall not correspond with any person who is in the custody of or under the supervision of any state, federal, county, community corrections, or

municipal law enforcement agency, or with any former inmate regardless of current custodial status, unless either of the following conditions is met:

(1) The proposed correspondents are members of the same immediate family or are parties in the same legal action, or one of the persons is a party and the other person is a witness in the same legal action.

(2) Permission for correspondence is granted due to exceptional circumstances. Verification and approval of offender correspondence shall be conducted pursuant to the internal policies and procedures of the department of corrections.

(f) Writing supplies and postage.

(1) Stationery and stamps shall be available for purchase from the inmate canteen.

(2) Indigent inmates, as defined by the internal management policies and procedures of the department of corrections, shall receive reasonable amounts of free writing paper, envelopes, and postage for first-class domestic mail weighing one ounce or less, not to exceed four letters per month.

(3) All postage for legal and official mail shall be paid by the inmate, unless the inmate is indigent, as defined by the internal management policies and procedures of the department of corrections. The cost of postage for legal or official mail paid by the facility on behalf of an indigent inmate shall be deducted from the inmate's funds, if available. Credit for postage for legal and official mail shall be extended to indigent inmates under the terms and conditions of the internal management policies and procedures of the department of corrections. Outgoing legal or official mail sent with postage provided on credit shall be subject to inspection and a cursory reading in the presence of the inmate for the purpose of ascertaining that the mail is indeed legal or official mail, and the inmate shall then be permitted to seal the envelope containing the mail.

(4) The facility shall not pay postage for inmate groups or organizations.

(5) The mailing of postage stamps by an offender shall be prohibited.

(g) Publications.

(1) Inmates may receive books, newspapers, and periodicals as permitted by the internal management policies and procedures of the department of corrections. All books, newspapers, and periodicals shall be purchased through account withdrawal requests. Only books, newspapers, and periodicals received directly from a publisher or a vendor shall be accepted. However, an inmate shall be permitted to receive printed material, including newspaper and magazine clippings, if the material is included as part of a first-class letter that does not exceed one ounce in total weight.

(2) The procedures for censorship of mail listed in subsection (d) shall be used for censorship of publications.

(3) No publication that meets either of the following conditions shall be allowed into the facility:

(A) Contains sexually explicit material, as described in K.A.R. 44-12-313, or is otherwise illegal, in whole or in part; or

(B) meets, in whole or in part, the test for censorship of mail in subsection (d).

(4) Inmates shall have the option of having censored publications in their entirety either mailed out of the facility at their own expense or discarded.

(5) Before transferring between facilities, the inmate shall arrange for a change of address for the inmate's mail, including newspapers and periodicals. Mail, with the exception of legal mail or official mail, shall not be forwarded for more than 30 days after the date of transfer.

(h) Regulation violation. Each violation of this regulation shall be a class I offense. (Authorized by K.S.A. 2013 Supp. 75-5210, K.S.A. 2013 Supp. 75-5251; implementing K.S.A. 2013 Supp. 75-5210, K.S.A. 2013 Supp. 75-5251, and K.S.A. 75-5256; effective May 1, 1980; amended May 1, 1981; amended May 1, 1984; amended May 1, 1986; amended May 1, 1988; amended April 20, 1992; amended Jan. 3, 1995; amended April 17, 1998; amended Feb. 15, 2002; amended, T-44-3-19-04, March 19, 2004; amended July 2, 2004; amended July 13, 2007; amended June 20, 2014.)

44-12-602. Posting notices. No inmate may post or distribute any written communications without the written approval of the warden or designee. Violation of this regulation shall be a class II offense. This amendment shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 75-5210; effective May 1, 1980; amended April 20, 1992; amended February 15, 2002.)

LEGAL WORK; LAW LIBRARY, LEGAL ASSISTANCE

44-12-701. (Authorized by K.S.A. 1979 Supp. 75-5210, 75-5210(f); effective May 1, 1980; revoked April 20, 1992.)

44-12-702. Legal assistance by inmates. In accordance with applicable rules of the facility, an inmate may give, but shall not charge for, assistance in legal matters to another inmate if the assistance is requested by the other inmate. Violation of this regulation shall be a class II offense. This amendment shall be effective on and after February 15, 2002. (Authorized by K.S.A. 75-5210; implementing K.S.A. 75-5210, 75-5251; effective May 1, 1980; amended February 15, 2002.)

ADMINISTRATION PUBLICATIONS AND POSTINGS

44-12-801. Bulletin boards. (a) No inmate shall remove any item from any bulletin board. Each inmate shall be held responsible for compliance with orders published by posting on the bulletin boards. Bulletin boards shall be used by and shall be under the exclusive control of the warden or designee.

(b) Violation of this regulation shall be a class II offense.

This amendment shall be effective on and after February 15, 2002.

(Authorized by K.S.A. 75-5210; implementing K.S.A. 75-5210, 75-5251; effective May 1, 1980; amended February 15, 2002.)

CONTRABAND

44-12-901. Dangerous contraband. (a) Dangerous contraband shall be defined as any of the following:

(1) Any item, or any ingredient or part of or instructions on the creation of an item, that is inherently capable of causing damage or injury to persons or property, or is capable or likely to produce or precipitate dangerous situations or conflict, and that is not issued by the department of corrections or the facilities, sold through the canteen, or specifically authorized or permitted by order of the secretary of corrections or warden for use or possession in designated areas of the facility;

(2) any item that can be the basis for a charge of felony for its possession under the laws of Kansas or the United States; or

(3) any item that, although authorized, is misused if the item in its misused form has the characteristics of being able to cause damage or injury to persons or property or being likely to precipitate dangerous situations or conflicts.

(b) All contraband shall be confiscated and shall be ordered forfeited by the inmate.

(c) No inmate shall possess, hold, sell, transfer, receive, control, or distribute any dangerous contraband.

Violation of this regulation shall be a class I offense. (Authorized by and implementing K.S.A. 2006 Supp. 75-5210; effective May 1, 1980; amended May 1, 1981; amended April 20, 1992; amended July 13, 2007.)

44-12-902. Contraband. (a) Contraband shall be defined as either of the following:

(1) Any item, or any ingredient or part of or instructions for the creation of the item, that is not issued by the department of corrections, sold through the facility canteen, or specifically authorized or permitted by order of the secretary of corrections or warden for use or possession in designated areas of the facility; or

(2) any item that, although authorized, is misused in a way that causes some danger or injury to persons or property.

(b) All contraband shall be confiscated and shall be ordered forfeited by the inmate.

(c) No inmate shall possess, hold, sell, transfer, receive, control, or distribute any type of contraband. Violation of this subsection shall be a class II offense.

(d) No inmate shall possess papers, bottles, containers, trash, or any other items in excess of those limits established by regulation, internal management policies and procedures, and facility general orders. The possession of excess items described in this subsection shall be considered

nuisance contraband and shall be a class III offense.

(e) Alternatively, violation of this regulation may be handled according to the summary disposition procedure set forth in K.A.R. 44-13-201b.

(Authorized by and implementing K.S.A. 2006 Supp. 75-5210, K.S.A. 75-5251; effective May 1, 1980; amended April 20, 1992; amended Feb. 15, 2002; amended July 13, 2007.)

44-12-903. Tobacco contraband. (a) For the purposes of this regulation, each of the following terms shall have the meaning specified in this subsection:

(1) "Tobacco products" means cigarettes, cigars, pipe tobacco, loose-leaf tobacco, chewing tobacco, and smokeless tobacco. This term shall not include pharmacological aids for smoking cessation approved by the food and drug administration.

(2) "Tobacco substitutes" means any substance ingested by smoking, and any herbal or leaf-based replacements for chewing tobacco. This term shall not include any controlled substance, as defined by K.S.A. 65-4101(e) and amendments thereto.

(3) "Smoking paraphernalia" means pipes, lighters, matches, altered batteries, cigarette papers, rolling machines, and all other items fabricated, developed, or processed for the primary purpose of facilitating the use or possession of tobacco products or tobacco substitutes.

(b) No inmate shall possess, hold, sell, transfer, receive, control, or distribute tobacco products, tobacco substitutes, or smoking paraphernalia, except as specified in subsection (d).

(c) No inmate shall possess, hold, sell, transfer, receive, or control tobacco products, tobacco substitutes, or smoking paraphernalia that is intended to be introduced or distributed upon the grounds of a correctional facility.

(d) Inmates may engage in bona fide religious activities sanctioned by the warden of the facility involving the use and possession of tobacco products, tobacco substitutes, and smoking paraphernalia as permitted by and in accordance with the terms of internal management policies and procedures of the secretary.

(e) Violation of this regulation shall be a class I offense. (Authorized by and implementing K.S.A. 2006 Supp. 75-5210; effective July 13, 2007.)

VIOLATION OF STATUTES, REGULATIONS AND ORDERS

44-12-1001. Violation of statutes, other regulations, or orders. (a) Unless otherwise designated in this rule book, violation of state or federal statutes shall be a class I offense if the statute is a felony crime. A violation shall be a class II offense if the statute designates a misdemeanor criminal offense.

(b) Unless otherwise designated in this rule book, violation of any civil penalty statute or any regulation shall be a class III offense. (Authorized by and implementing K.S.A. 1991 Supp. 75-5210; effective May 1, 1980;

amended May 1, 1981; amended April 20, 1992.)

44-12-1002. Violation of published internal management policies and procedures or of published orders. Each violation of any published internal management policies and procedures of the secretary of corrections or any published orders of the warden of the facility shall be an offense of the class stated in the internal management policy and procedure or in the order itself. If no class is stated, the violation shall be a class III offense. Each violation of any internal management policy and procedure shall be subject to the penalties that are prescribed in the internal management policy and procedure. If no penalty is prescribed, then the violation shall be subject to the penalties provided in this article of regulations.

(Authorized by and implementing K.S.A. 2002 Supp. 755210, K.S.A. 75-5251; effective May 1, 1980; amended May 1, 1981; effective April 20, 1992; amended July 11, 1994; amended February 15, 2002; amended T-44-3-11-03, March 11, 2003; amended July 25, 2003.)

ATTEMPT, CONSPIRACY AND ACCESSORY TO COMMISSION OF OFFENSE

44-12-1101. Attempt, conspiracy, accessory, solicitation; liability for offenses of another. Each attempt or conspiracy to violate any regulation, or acting as an accessory for any offense, or soliciting another or other persons to commit any offense, shall carry the same penalty as that for the offense itself. The specific regulation that is the basis of the attempt, conspiracy, accessory, or solicitation shall be stated and described in the disciplinary report.

(a) Attempt.

(1) An attempt shall mean any overt, or clearly evident, act toward the perpetration of an offense by an inmate who intends to commit the offense but fails in the perpetration of the offense or is prevented from or intercepted in executing that offense.

(2) It shall not be a defense to a charge of attempt that the circumstances under which the act was performed, the means employed, or the act itself was such that the commission of the offense was not possible.

(b) Conspiracy.

(1) A conspiracy shall mean an agreement with another person to commit an offense or to assist in committing an offense. No inmate may be convicted of a conspiracy unless an overt act furthering that conspiracy is alleged and proved to have been committed by the inmate or by a coconspirator.

(2) It shall be a defense to a charge of conspiracy that the accused voluntarily and in good faith withdrew from the conspiracy and

communicated the fact of this withdrawal to one or more of the accused conspirators, before any overt act furthering the conspiracy was committed by the accused or by a coconspirator.

(c) Accessory to an offense. Aiding an offender or one charged with an offense shall mean knowingly harboring, concealing, or aiding any inmate who has committed an offense, or one who has been charged with an offense, with intent that the inmate will avoid or escape from apprehension, disciplinary hearing conviction, or punishment for the offense.

(d) Solicitation. Solicitation shall mean commanding, encouraging, or requesting another person to commit an offense, attempt to commit an offense, or aid and abet in the commission or attempted commission of an offense for the purpose of promoting or facilitating the offense. It shall not be a defense to a charge of solicitation that the inmate failed to communicate with the person solicited to commit the offense if the inmate's conduct was designed to effect a communication. It shall be a defense to a charge of solicitation that the inmate, after soliciting another person to commit an offense, persuaded that person not to do so or otherwise prevented the commission of the offense, under circumstances manifesting a complete and voluntary renunciation of the inmate's prohibited purposes.

(e) Liability for the offenses of another. An inmate shall be responsible for an offense committed by another if the inmate intentionally aids, abets, advises, hires, counsels, or procures the other to commit the offense. The specific underlying regulation violation committed by the other inmate that is the subject of the activity of aiding, abetting, advising, hiring, counseling, or procuring shall be stated and described in the disciplinary report. (Authorized by and implementing K.S.A. 2006 Supp. 75-5210; effective, E-79-37, Jan. 1, 1979; effective May 1, 1980; amended, T-83-23, Aug. 11, 1982; amended, T-846, May 1, 1983; amended May 1, 1984; amended April 20, 1992; amended July 13, 2007.)

INCREASED PENALTIES

44-12-1201. Increased penalty for involving or victimizing an inmate under 18.

(a) If any inmate who is 18 years of age or older involves, induces, or solicits an inmate who is less than 18 to commit an offense, or if the victim of an offense committed by the older inmate is an inmate who is less than 18, the older inmate may be subject to a penalty that is double the penalty established for the offense under these regulations. One of the following findings shall be necessary to invoke this increased penalty:

(1) The older inmate is guilty of the same offense as that committed by the younger inmate.

(2) The older inmate is guilty of a violation of K.A.R. 44-121101 with respect to that offense.

(3) The older inmate is guilty of an offense involving the victimization of the younger inmate.

(b) The limitations of K.A.R. 44-12-1308 regarding sentences of disciplinary segregation shall be construed, within the context of K.A.R. 44-12-1201, to mean that the total length of a sentence of disciplinary segregation for all charges arising from a single incident shall not exceed 120 days. (Authorized by and implementing K.S.A. 2005 Supp. 75-5210; effective May 1, 1980; amended May 1, 1981; amended May 1, 1984; amended April 20, 1992; amended Jan. 3, 1995; amended July 13, 2007.)

44-12-1202. Conviction of four offenses in six months. Subject to the limitations contained in K.A.R. 44-12-1308, upon conviction of the fourth offense of the same class within the immediate prior six month period, the hearing officer may impose a sentence for such fourth offense not greater than twice the maximum that can be imposed for an offense of that class. (Authorized by and implementing K.S.A. 1991 Supp. 75-5210; effective May 1, 1980; amended April 20, 1992.)

CLASSIFICATION OF OFFENSES AND PENALTIES

44-12-1301. Class I offenses. (a) Class I offenses shall be any of the following:

(1) Those violations of a very serious nature that are designated in this article as class I offenses, whether or not the offense is also a violation of law;

(2) those violations of law designated by the laws of the state of Kansas as felonies; or

(3) those violations of law designated by the laws of the United States as felonies.

(b) The penalty for a class I offense may be any one or all, or any combination of the following, unless prohibited in this subsection:

(1) Disciplinary segregation, not to exceed 45 days;

(2) loss of "good time credits," not to exceed six months;

(3) extra work without incentive pay for not more than two hours each day, not to exceed 30 days;

(4) work without incentive pay, not to exceed five days. This penalty shall not include a fine and shall apply only to ordinary inmate work assignments;

(5) restriction to inmate's own cell, not to exceed 10 days;

(6) restriction from privileges, not to exceed 60 days;

(7) a fine of not more than \$20.00, unless prohibited by paragraph (b)(4);

(8) restitution of at least \$3.00; or

(9) an oral or written reprimand. (Authorized by and implementing K.S.A. 2006 Supp. 75-5210; effective May 1, 1980; amended May 1, 1981; amended, T-83-23, Aug. 11, 1982; amended, T-84-6, May 1, 1983; amended May 1, 1984; amended May 1, 1985; amended April 20, 1992; amended July 13, 2007.)

44-12-1302. Class II offenses. (a) Class II offenses shall be any of the following:

(1) Those offenses of moderate seriousness that are designated in this article as class II offenses, whether or not the offenses are also violations of the law;

(2) those violations of law designated by the laws of the state of Kansas as misdemeanors; or

(3) those violations of law designated by the laws of the United States as misdemeanors.

(b) The penalty for a class II offense may be any one or any combination of the following, unless prohibited in this subsection:

(1) Disciplinary segregation, not to exceed 15 days;

(2) loss of good time credits, not to exceed three months;

(3) extra work without incentive pay for not more than two hours each day, not to exceed 20 days;

(4) work without incentive pay, not to exceed five days. This penalty shall not include a fine and shall apply only to ordinary inmate work assignments;

(5) restriction to inmate's own cell for a period, not to exceed seven days;

(6) restriction from privileges, not to exceed 30 days;

(7) a fine not more than \$15.00, unless prohibited by paragraph (b)(4);

(8) restitution of at least \$3.00; or

(9) an oral or written reprimand. (Authorized by and implementing K.S.A. 2006 Supp. 75-5210; effective May 1, 1980; amended May 1, 1981; amended, T-83-23, Aug. 11, 1982; amended, T-84-6, May 1, 1983; amended May 1, 1984; amended April 20, 1992; amended July 13, 2007.)

44-12-1303. Class III offenses. (a) Class III offenses shall be those offenses of a less serious nature that are designated in this article as class III offenses, whether or not the offense is also a violation of law. Each violation of any published secretary of corrections' regulation or order of the warden that is not otherwise designated in these regulations or warden's orders as a class I or class II offense shall be a class III offense.

(b) The penalty for a class III offense may be any one or any combination of the following, unless prohibited in this subsection:

(1) Restriction to inmate's own cell for not more than three days;

(2) restriction from privileges for not more than 20 days;

(3) extra work without incentive pay for not more than two hours each day for a period not to exceed 10 days;

(4) work without incentive pay, not to exceed five days. This penalty shall not include a fine and shall apply only to ordinary inmate work assignments;

(5) a fine of not more than \$10.00, unless prohibited by paragraph (b)(4);

(6) restitution of at least \$3.00; or

(7) an oral or written reprimand. (Authorized by and implementing K.S.A 2006 Supp. 75-5210; effective May 1, 1980; amended May 1, 1981;

amended, T-83-23, Aug. 11, 1982; amended, T-84-6, May 1, 1983; amended May 1, 1984; amended May 1, 1985; amended April 20, 1992; amended July 13, 2007.)

44-12-1304. (Authorized by and implementing K.S.A. 1983 Supp. 75-5210; effective May 1, 1980; amended May, 1 1981; amended, T-83-23, Aug. 11, 1982; amended, T-84-6, May 1, 1983; amended May 1, 1984; revoked April 20, 1992.)

44-12-1305. Use of fines. Fines shall be deposited in the inmate benefit fund. (Authorized by K.S.A. 1979 Supp. 75-5210, 75-5210(f); effective May 1, 1980.)

44-12-1306. Use of restitution. (a) When restitution is used in the disciplinary process, the following requirements and limitations shall apply:

(1) The amount of and manner of payment of restitution imposed may be appealed in the same manner and to the same extent as those for any other appeal of sentence in the disciplinary process.

(2) The appropriateness and amount of restitution ordered shall be determined by consideration of the factors set forth in K.A.R. 44-12-1307.

(3) No inmate shall be required to continue payment on any restitution imposed under these regulations while released from incarceration. Upon any subsequent readmission of the inmate to a facility, any restitution owed may be collected. No portion of the inmate's gate money gratuity as authorized by K.S.A. 75-5211, and amendments thereto, shall be used toward the payment of this restitution.

(4) Restitution shall continue to be paid out of money earned by the inmate in the work release program, the private non-prison employment program, or any other gainful employment industries program. Restitution payment shall be limited to a reasonable amount and, if appropriate, shall be made in installments.

(5) The inmate shall be given notice in the disciplinary report or, if necessary, in an amended disciplinary report served upon the inmate no later than 24 hours before the hearing of the amount and basis for seeking restitution. The inmate shall be given an opportunity at the sentencing phase of the hearing to present evidence regarding the appropriate amount of restitution. The hearing officer shall limit the evidence to a reasonable amount and extent that is appropriate to the nature of the administrative hearing, the level of the offense, and the extent of possible impact on the inmate's resources.

(b) If restitution is to be made to an entity, whether or not the entity is a governmental agency or unit, then the money satisfying the order of restitution shall be delivered to that entity. If restitution is paid to an inmate, the money shall be transferred by the clerk from the account of the inmate payer to the account of the inmate payee after the conclusion of the entire disciplinary process, including any appeal. If restitution is paid to any

other person, the hearing officer shall determine how payment is to be made, and the warden, or designee shall review the payment arrangements for approval, conferring with the facility business manager if appropriate. (Authorized by and implementing K.S.A. 2005 Supp. 75-5210, K.S.A. 75-5251; effective May 1, 1981; amended May 1, 1987; amended April 20, 1992; amended Feb. 15, 2002; amended July 13, 2007.)

44-12-1307. Fines and restitution, imposition and collection; limits. Fines shall be fairly and appropriately used. Fines shall not be used in a way that disrupts family support payments, tax payments, or court-ordered restitution payments. This amendment shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 75-5210, 75-5251; effective May 1, 1984; amended May 1, 1985; amended April 20, 1992; amended February 15, 2002.)

44-12-1308. Disciplinary segregation; limits. (a) The maximum sentence of disciplinary segregation for all violations arising out of one incident shall not exceed 60 days.

(b) Continuous confinement in disciplinary segregation for more than 30 days shall require the review and approval of the warden. (Authorized by and implementing K.S.A. 2006 Supp. 75-5210; effective May 1, 1985; amended Jan. 3, 1995; amended July 13, 2007.)

Article 13.—DISCIPLINARY PROCEDURE PROCEDURE GENERALLY

44-13-101. Disciplinary procedure established, general description of system. (a) A disciplinary procedure in accordance with these regulations shall be implemented by the warden of each facility. The term "warden," as used throughout this article, shall include the warden's designee.

(b) Prosecution by criminal justice agencies in the community shall be deemed a separate process from this disciplinary procedure, and both prosecution and disciplinary procedures may be conducted on matters relating to the same factual situations.

(c) Subject to the limitations and guidelines set out in these regulations and subject to the control of the hearing officer exercised within the parameters of the law and these regulations, the inmate shall be entitled to the following:

- (1) To receive advance written notice of the charge and a fair hearing by an impartial hearing officer;
- (2) to be present at the hearing;
- (3) to present documentary evidence;
- (4) to testify on the inmate's own behalf;

- (5) to have witnesses called to testify on the inmate's behalf;
- (6) to confront and cross-examine witnesses against the inmate; and
- (7) to be furnished with staff assistance according to K.A.R. 44-13-408.
- (d) The charge may be amended according to the provisions of these regulations.
- (e) If an inmate allegedly commits an act covered by criminal law, the case shall be referred to the appropriate law enforcement or prosecutorial agency as provided in K.A.R. 44-13 103.
- (f) There shall be three classes of offenses, which shall be processed according to the provisions of these regulations.
- (g) The disciplinary hearing process shall be structured as specified in K.A.R. 44-13-403, 44-13-404, and 44-13-405a.
- (h) All stages of the disciplinary hearing shall be conducted by a hearing officer appointed by the warden according to K.A.R. 44-13-105.
- (i) A complete log of the disciplinary process shall be maintained as specified in K.A.R. 44-13-509.
- (j) The disciplinary hearing shall be conducted within a certain time following notice of the charge as established by these regulations. Continuances and recesses of the hearing may be granted. Generally, the inmate shall be permitted to be present at all stages of the hearing, except as provided by these regulations.
- (k) Staff assistance, shall be permitted only under limited conditions established in K.A.R. 44-13-408.
- (l) A summary record shall be made of all stages of the hearing.
- (m) In class I and II offense cases, following an administrative review of the record and any needed adjustments of the disposition by the warden, the inmate may appeal the case to the secretary of corrections on the record. In class III offense cases, an appeal may be made to the warden on the record following an initial review of the record by some person within the facility other than the warden. No appeal to the secretary of corrections shall be permitted.
- (n) Nothing in these regulations shall prohibit the assignment or delegation of the disciplinary hearing and review process or any portion of it to the warden of another Kansas state correctional facility if good cause is shown and if justice and fairness will not thereby be infringed. An assignment or delegation shall not be made except by the secretary of corrections or designee, or by the warden with the secretary of corrections' written approval. This restriction shall not prohibit the holding of hearings at a receiving facility following a transfer based on a classification decision in the sending facility where the offense occurred in the sending facility.
- (o) This regulation shall summarize the disciplinary procedure and shall not be construed or interpreted as establishing any rights or procedures that are not specifically set forth in article 13.

This amendment shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 75-5210, 75-5251; effective May 1, 1980; amended, T-83-23, Aug. 11, 1982; amended, T-84-6, May 1, 1983;

amended May 1, 1984; amended, T-85-37, Dec. 19, 1984; amended May 1, 1985; amended May 1, 1987; amended April 20, 1992; amended February 15, 2002.)

44-13-101a. Waiver of rights. (a) Each inmate shall be permitted to voluntarily waive the right to any time limit or process afforded by the disciplinary procedure regulations in this article. The waiver shall be in writing and shall state with specificity the particular time limit or process being waived. The waiver shall be made in the form and manner approved or prescribed by the secretary of corrections. The waiver shall be signed by the inmate and the hearing officer unless the inmate is waiving the right to the disciplinary hearing process by accepting a summary judgment citation as defined in K.A.R. 44-13-201b.

(b) The inmate shall be informed of the nature of the time limit or process being waived and of the impact and consequence of the waiver.

(c) Unless the inmate is waiving the right to the disciplinary hearing process by accepting a summary judgment citation as defined in K.A.R. 44-13-201b, the inmate shall be questioned by the hearing officer before accepting the waiver to determine if it is knowingly and voluntarily made. (Authorized by and implementing K.S.A. 2006 Supp. 75-5210; effective May 1, 1984; amended May 1, 1985; amended April 20, 1992; amended July 13, 2007.)

44-13-102. (Authorized by K.S.A. 1980 Supp. 75-5210; effective, May 1, 1980; amended, May 1, 1981; revoked, T83-23, Aug. 11, 1982; revoked, T-84-6, May 1, 1983; revoked, May 1, 1984.)

44-13-103. Prosecution by outside agency. (a) When an inmate allegedly commits an act covered by criminal law, the case shall be referred to the appropriate law enforcement or prosecutorial agency for consideration for prosecution unless the prosecutor provides a written statement requesting that certain types or classes of crimes not be reported, or requesting that no report be made.

(b) Notification for prosecution by outside agency shall not preclude a disciplinary charge and proceeding by the correctional facility for the rule infraction arising from the same facts. The hearing officer may proceed or continue the case to await the outcome of the prosecution by the law enforcement agency. (Authorized by and implementing K.S.A. 1991 Supp. 75-5210; effective May 1, 1980; amended May 1, 1984; amended April 20, 1992.)

44-13-104. This revocation shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 1990 Supp. 75-5210; effective May 1, 1980; amended May 1, 1981; amended May 1, 1984; amended April 20, 1992; revoked February 15, 2002.)

44-13-105. The disciplinary administrator and hearing officers.

(a) A disciplinary administrator shall be appointed by the warden of each facility to manage the disciplinary process for the entire facility. Any suitable employee may be designated by the warden to carry out this task on a continuing basis.

(b) One or more impartial hearing officers shall be appointed by the warden to conduct disciplinary hearings at each department-operated facility.

(1) The minimum qualification for hearing officers shall be satisfactory completion of required training.

(2) A person who is the reporting officer, investigator, or a witness in a case shall not be the hearing officer in that case.

This amendment shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 75-5210, 75-5251; effective, T-83-23, Aug. 11, 1982; effective, T-846, May 1, 1983; effective May 1, 1984; amended February 15, 2002.)

44-13-106. Administration of oaths; designation of persons authorized. (a) The warden, a deputy warden, the disciplinary administrator appointed pursuant to K.A.R. 44-13-105, and those persons serving as hearing officers at the facility disciplinary hearings shall be authorized to administer oaths to witnesses in those proceedings.

(b) Oaths shall be administered in a form and a manner that are in accordance with K.S.A. 54-101 et seq., and amendments thereto.

(Authorized by and implementing K.S.A. 2006 Supp. 75-5210, K.S.A. 75-5251; effective, T-85-37, Dec. 19, 1984; effective May 1, 1985; amended April 20, 1992; amended Feb. 15, 2002; amended July 13, 2007.)

44-13-107 through 114 inclusive. Reserved.

44-13-115. (Authorized by and implementing K.S.A. 1990 Supp. 75-5210; effective May 1, 1984; amended May 1, 1987; revoked April 20, 1992.)

COMMENCEMENT OF PROCEEDINGS

44-13-201. Disciplinary report and written notice. (a) A disciplinary proceeding shall be commenced upon the making of a charge by a disciplinary report.

(1) The inmate shall be notified in writing by personal service of a copy of the report upon the inmate within 48 hours after the issuance of the disciplinary report, excluding Saturdays, Sundays, and holidays.

(2) The report shall be served upon the inmate by an officer or unit team manager. The report shall not be served upon the inmate by the same person who brought the charge against the inmate.

(3) The officer serving the report shall inform the inmate that the inmate may enter a plea of guilty or no contest to the charge at the time of service of the report.

(A) If the officer serving the report has been appointed as a hearing officer by the warden according to K.A.R. 44-13-105, that officer may immediately, or as soon as possible, accept the inmate's plea of guilty or no contest, conduct a sentencing hearing, and

(B) If the officer serving the report has not been appointed as a hearing officer by the warden according to K.A.R. 44-13-105, or wishes to refer the case to another hearing officer, then the inmate desiring to plead guilty or no contest to the charge at the time of service of the report shall be brought immediately, or as soon as possible, before a hearing officer, who shall accept the inmate's plea of guilty or no contest, conduct a sentencing hearing, and impose sentence by following the procedures established in K.A.R. 44-13-403.

(4) If necessary, the hearing officer may accept the inmate's plea of guilty or no contest immediately, or as soon as possible, after service of the report, but may delay the sentencing hearing and imposition of sentence for not more than six working days.

(5) When the unit team manager serves the report, or at any time before the scheduled hearing, the unit team manager may implement one of the following options:

(A) Offer the inmate diversion of the charge or charges in accordance with K.A.R. 44-13-201a;

(B) offer the inmate summary judgment in accordance with K.A.R. 44-13-201b; or

(C) inform the inmate that the inmate may enter a plea of guilty or no contest to the charge at the time of service of the report and, acting as a hearing officer, accept the inmate's plea of guilty or no contest, conduct a sentencing hearing, and impose sentence by following the procedures established in K.A.R. 44-13-403. If the inmate accepts this option, the unit team manager shall forward to the disciplinary administrator the guilty or no contest plea waiver form and disposition and hearing record.

(b) If the inmate is transferred to another facility before the arrival of the disciplinary report at the receiving facility, service of the report upon the inmate shall be made within 48 hours after arrival of the report, excluding Saturdays, Sundays, and holidays, in the same manner as that specified in subsection (a).

(c) The disciplinary report shall be written within 48 hours of the offense, the discovery of the offense, or the determination following an investigation that the inmate is the suspect in the case and is to be named as defendant.

(1) If an alleged violation is based upon uncertain facts, an appropriate investigation shall be initiated within 24 hours of the time the allegation is made and shall be completed without unreasonable delay. The investigation shall determine if a disciplinary action should be initiated or continued by determining whether the allegation is soundly based on reasonably reliable facts. The investigator shall be a staff member, and, if practical, shall be a staff member other than the person making the allegation. If an inmate is making the allegation, the officer who is receiving the allegation and is in a

position to write the report may also be the investigator.

(2) The investigation report may be adopted by the charging officer both as the charge itself, and as the officer's sworn statement in lieu of testimony in any case, in accordance with the regulations. If necessary, pending completion of the investigation, the inmate may be held in administrative segregation for a certain period according to K.A.R. 44-14-302(b).

(3) The report shall be reviewed and either approved or disapproved by the shift supervisor or unit team manager based on whether or not the report is sound and adequate and is made in proper manner and form.

(4) The shift supervisor or unit team manager shall assure that all necessary elements of the alleged violation are contained in the written report of the facts of the incident and that the report does not represent an abuse of the disciplinary process. The shift supervisor or unit team manager shall also make or direct appropriate amendments to the report, including use of the summary judgment procedure under K.A.R. 44-13-201b.

(5) If the charge is dismissed or the report is otherwise rejected by the shift supervisor or unit team manager, a written explanation shall be made in the record and filed with the report, with a copy given to the officer. The report shall not be destroyed.

(d) The disciplinary report shall constitute a formal statement of the charge, shall be in a form prescribed by the secretary, and shall include the following:

(1) The name and number of the inmate;

(2) the institution;

(3) the signature and title of the writing officer;

(4) the date and time of the alleged offense;

(5) the date and time the report is written;

(6) the nature of the alleged offense;

(7) the class, title, and number of the rule or regulation violated, including citation to any underlying statute, regulation, internal management policy and procedure, or published order allegedly violated;

(8) the specific regulation that is the basis of an attempt, conspiracy, accessory, solicitation, or liability for the offenses of another under K.A.R. 44-12-1101;

(9) the names of known staff witnesses;

(10) a brief description of the circumstances and facts of the violation if, in cases in which the violation is based upon information supplied by a confidential witness or informant, the identity of the witness or informant is not disclosed, nor is any reference or factual detail likely to reveal the identity of the witness or informant;

(11) any unusual inmate behavior;

(12) the disposition of any physical evidence;

(13) any immediate action taken, including the use of force; and

(14) the factual basis for and the amount of any restitution sought for any injury, damage, or other loss caused by or resulting from the violation charged.

(e) An inmate shall not be charged unless the regulation or law has been made in writing and published.

(f) The officer may orally warn or reprimand the inmate instead of writing a report or otherwise documenting the incident. (Authorized by and implementing K.S.A. 2006 Supp. 75-5210, K.S.A. 75-5251; effective May 1, 1980; amended, T-83-23, Aug. 11, 1982; amended, T-84-6, May 1, 1983; amended May 1, 1984; amended May 1, 1987; amended April 20, 1992; amended July 11, 1994; amended Feb. 15, 2002; amended July 13, 2007.)

44-13-201a. Diversion procedure. (a) In any case involving one or more alleged class I or class II offenses, the charged inmate's unit team manager may initiate, or a member of the inmate's unit team in the inmate's assigned housing unit may request, consideration of diversion of the pending charges from prosecution, in connection with the formation and implementation of an intervention plan intended to address each behavioral issue presented in the incident in question. If a request is made by a unit team member other than the unit team manager, the request shall be submitted in writing and addressed to the unit team manager, who may decline further action or who may proceed further with the request. The unit team manager's decision about the request shall be final and shall not be subject to hearing or appeal under these regulations or to review pursuant to the inmate grievance procedure or any other administrative remedial procedure.

(b) The unit team manager may formulate the intervention plan or may assign the diversion request to the inmate's assigned correctional counselor for review and recommendation as to the nature and components of the intervention plan. The unit team manager shall apply for a continuance of the case pursuant to K.A.R. 44-13-402 if necessary, in order to complete consideration and formulation of the intervention plan.

(c) Upon formulation of the intervention plan, the unit team manager shall confer with the reporting officer or supervisor and the inmate. If both parties consent to the diversion, the unit team manager shall present to the inmate for the inmate's execution a written request for continuance of the disciplinary case for the length of time required to carry out the plan, which shall not exceed 180 days, and shall also present the written intervention plan to the inmate and the reporting officer or supervisor. This plan shall be in the form of an agreement to be signed by both parties and the unit team manager. If either party fails to consent, then the case shall proceed for prosecution. If a continuance has been secured by the unit team manager, then the unit team manager shall notify the disciplinary administrator in writing of the failure to agree to diversion.

(d) As a condition of the agreement specified in subsection (c), the inmate shall waive any right or claim to have the disciplinary case heard and determined within ordinary time limits. The inmate shall also agree and acknowledge that the determination as to whether the inmate has successfully completed the plan is that of the unit team manager, whose

decision in that regard shall not be subject to hearing or appeal under these regulations or to review under the inmate grievance procedure or any other administrative remedial procedure.

(e) The request for continuance specified in subsection (c) shall then be forwarded to the facility disciplinary administrator, who shall proceed to grant the continuance, duly note the length of the continuance specified in the request on the case continuance log, and further note the diversion of prosecution of the charge or charges under the assigned case number.

(f) If the inmate fails to successfully complete the intervention plan or receives another disciplinary report for any class of offense during the term of the plan, the diversion of the charge or charges from prosecution shall immediately terminate. Upon receipt of written notification of the termination from the inmate's unit team manager, the disciplinary administrator shall proceed to docket the case for hearing, notify the parties, and process the case according to the ordinary procedures set forth in these regulations.

(g) If the inmate successfully completes the intervention plan, the reporting officer or supervisor or, in that person's absence, the unit team manager shall submit a written request for dismissal of the case to the disciplinary administrator, who shall cause the case to be shown as dismissed in the records of the administrator's office. The existence of the case and its charge or charges shall not be part of the inmate's master file or any other file subject to review by the Kansas parole board or to disclosure to the public. (Authorized by and implementing K.S.A. 2006 Supp. 75-5210; effective July 13, 2007.)

44-13-201b. Summary judgment procedure. (a) In any case involving one or more alleged class II or class III offenses, the reporting officer may offer the inmate the option of resolving the matter through the summary judgment procedure as an alternative to writing a disciplinary report that leads to initiation of the formal disciplinary hearing process.

(b) Officers shall carry with them or have immediate access to summary judgment citation forms.

(c) If an officer observes an inmate in the act of committing one or more offenses designated as eligible for summary judgment procedures that the officer believes require more than an undocumented, on-the-spot verbal reprimand, the officer may file a formal disciplinary report against the inmate or offer the inmate summary judgment by issuing a summary judgment citation. If summary judgment is offered to the inmate by the officer, the offer shall not be withdrawn without the commission of additional alleged disciplinary offenses by the inmate.

(1) The summary judgment citation shall be written, verified pursuant to K.S.A. 53-601 and amendments thereto, and served on the inmate by the reporting officer within 24 hours of the alleged incident, or within 48 hours if directed by the shift supervisor or unit team manager under paragraph (c)(3)(B), and shall include the following:

- (A) The date and time of each alleged offense;
- (B) the date and time the citation is written;
- (C) the name and rule number of each alleged offense;
- (D) a statement of the facts of the alleged incident, including names of witnesses;
- (E) the date and time that the citation is served on the inmate;
- (F) the summary judgment sanction; and
- (G) the signature of the inmate indicating acceptance or refusal of the summary judgment.

(2) The officer may impose only one of the following summary judgment sanctions regardless of the number of offenses cited:

- (A) Restriction from privileges for not more than 10 days;
- (B) a fine not to exceed \$10.00;
- (C) extra work without incentive pay for not more than two hours each day, not to exceed five days;
- (D) work without incentive pay not to exceed five days, which shall apply only to ordinary inmate work assignments; or
- (E) restitution of not less than \$3.00 and not more than \$10.00.

(3) The inmate may choose whether to accept the summary judgment or to reject it in favor of the formal disciplinary hearing process. This decision shall be made within one hour of the inmate's receipt of the citation, or it shall be assumed that the inmate refused the summary judgment. The officer may choose to impose a different summary judgment sanction after discussion of the incident with the inmate, and this fact shall be documented on the summary judgment citation if the inmate then accepts the summary judgment.

(A) If the inmate accepts the summary judgment offered, this acceptance shall constitute a waiver of the inmate's right to the benefits of the formal disciplinary hearing process. The waiver of rights established according to K.A.R. 44-13-101a shall be executed by the inmate. Upon the inmate's acceptance of the summary judgment, the sanction shall be immediately imposed, and the shift supervisor or unit team manager shall be notified.

(B) If the inmate refuses the summary judgment offered, the inmate shall receive the applicable hearing process. The summary judgment citation shall be marked and signed by the officer and the inmate to indicate the inmate's refusal. The citation may then be used in lieu of the more formal disciplinary report to initiate the formal disciplinary hearing process. The citation shall then be submitted to the shift supervisor or unit team manager for review and appropriate disposition, including any amendments that the reviewer may direct, pursuant to K.A.R. 44-13-201(c)(3) and (4). The citation shall subsequently be served upon the inmate in the manner and using procedures that apply to ordinary disciplinary reports.

(C) If an inmate refuses the summary judgment offered, the inmate shall not be charged with a more serious offense or combination of offenses than was alleged in the summary judgment citation.

(D) All evidence shall be confiscated or seized in connection with the issuance of a summary judgment citation and shall be disposed of in accordance with K.A.R. 44-5-111.

(4) All summary judgment citations accepted by the inmate shall be documented in the inmate's file. (Authorized by and implementing K.S.A. 2006 Supp. 75-5210, K.S.A. 75-5251; effective April 20, 1992; amended July 11, 1994; amended Feb. 15, 2002; amended, T-44-3-11-03, March 11, 2003; amended July 25, 2003; amended July 13, 2007.)

44-13-202. Amendment of the charge. (a) If, in the judgment of the disciplinary administrator, hearing officer, or warden during administrative review, the charge is incorrect or a language change would change the substance of the charge or adversely affect the defense, the charge shall be amended and notice given to the inmate. After this notice is given, the inmate shall have the same period of time between notice and hearing to prepare a defense as would have been permitted when the charge was originally made.

(b) The same charge shall not be brought twice on same facts under any circumstance if a factual finding of guilt or innocence has been made. If a case has been dismissed without a factual finding of guilt or innocence, upon administrative review pursuant to K.A.R. 44-13-701, the reviewing authority may either reinstate the charge or amend the charge as deemed appropriate, and remand the case for hearing.

(c) After the hearing officer has begun to hear evidence in the case, the hearing officer may permit amendment at any time before a factual finding of guilt or innocence has been made if no additional or different offense is charged and if substantial rights of the defendant are not prejudiced.

(d) The hearing officer shall ask the inmate which option the inmate chooses:

(1) Continue the case for hearing on a different date to prepare a defense to the additional or different offense resulting from amendment of the original charge or charges; or

(2) waive any time period allowed to prepare to defend against any additional or different offense resulting from amendment of the original charge or charges and hold the hearing on the charges at the time of amendment of the disciplinary charge.

(Authorized by and implementing K.S.A. 2006 Supp. 75-5210, K.S.A. 75-5251; effective May 1, 1980, amended April 20, 1992, amended July 11, 1994; amended February 15, 2002; amended July 13, 2007.)

44-13-203. State prosecution and disciplinary hearing. (a) If the inmate has been charged, convicted, or acquitted in a criminal court of a charge or for a crime arising from the same facts, the disciplinary hearing may be conducted or continued at the hearing officer's discretion.

(b) Where the inmate has been convicted or acquitted in criminal court for a crime arising from the same facts, the hearing officer may rely on the

finding made by the jury or judge in conducting or dismissing the disciplinary hearing.

(c) If the disciplinary hearing is conducted while the criminal court case is pending, and the court later renders a decision different from the decision of the hearing officer, the decision of the hearing officer shall remain unaffected unless upon motion to the hearing officer there is a showing that the hearing officer's decision is based on an obviously erroneous fact which affects the substantial rights of the inmate, in which case the hearing officer shall correct its decision on the record. The hearing officer may not change his or her decision in order to convict an inmate following a conviction by the court if the hearing officer acquitted the inmate before the court made its finding, or otherwise change his or her decision to adversely affect the inmate. (Authorized by and implementing K.S.A. 1991 Supp. 75-5210; effective May 1, 1980; amended April 20, 1992.)

NATURE OF PROCEEDINGS

44-13-301. (Authorized by and implementing K.S.A. 1983 Supp. 75-5210; effective May 1, 1980; amended May 1, 1981; amended, T-83-23, Aug 11, 1982; amended, T-84-6, May 1, 1983; amended May 1, 1984; amended May 1, 1985; revoked April 20, 1992.)

44-13-302. (Authorized by and implementing K.S.A. 1983 Supp. 75-5210; effective May 1, 1980; amended T-83-23, Aug 11, 1982 amended, T-84-6, May 1, 1983; amended May 1, 1984; amended May 1, 1985; revoked April 20, 1992.)

44-13-302a. This revocation shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 1990 Supp. 75-5210; effective April 20, 1992; revoked February 15, 2002.)

44-13-303. (Authorized by and implementing K.S.A. 755210; effective May 1, 1980; amended May 1, 1981; amended T-83-23, Aug 11, 1982; amended, T-84-6, May 1, 1983; amended May 1, 1984; amended May 1, 1986; revoked April 20, 1992.)

44-13-304. This revocation shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 1990 Supp. 75-5210; effective May 1, 1980; amended, T-8323, Aug. 11, 1982; amended, T-84-6, May 1, 1983; amended May 1, 1984; amended April 20, 1992; revoked February 15, 2002.)

44-13-305. (Authorized by K.S.A. 1979 Supp. 75-5210; effective May 1, 1980; revoked, May 1, 1984.)

44-13-306. Inmate responsibilities. It shall be the responsibility of

each inmate being served to read the disciplinary report and any associated documentation, or to notify the serving staff that the inmate is illiterate or otherwise unable to read and understand the documents presented and request that the notice and associated documents be read to the inmate. Within 48 hours of service of the report, the inmate shall complete and submit the authorized form for witnesses to the disciplinary administrator. If one or more witnesses are requested, the inmate shall indicate on the form the testimony expected from each witness. The inmate may use the form to waive the inmate's right to call witnesses. An illiterate inmate shall receive assistance from the inmate's unit team correctional counselor for the purpose of completing the witness form, including any waiver of the right to call witnesses.

This regulation shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 75-5210 and 75-5251; effective February 15, 2002.)

44-13-307. Administrative review of requests for witnesses; denial of requests; issuance of summons; voluntary nature of witness appearance.

(a) The disciplinary administrator or hearing officer assigned to hear the charges shall review any written requests for witnesses submitted by the accused inmate according to K.A.R. 44-13-306.

(b) The disciplinary administrator or hearing officer performing a review of a written request for witnesses may deny the request if, in the judgment of the reviewer, the testimonies proffered on the request form meet any of the following criteria:

(1) Are clearly irrelevant or immaterial;

(2) are repetitious of other proffered testimony; or

(3) are properly excluded for reasons specified in K.A.R. 4413-405a. The truth of the proffered testimony shall be presumed in making this decision.

(c) Each denial of a request for witnesses shall be documented, including the reason or reasons for the denial, either on the request form or in the disciplinary case record.

(d) If practicable in the judgment of the reviewer, the inmate shall be informed, in writing and in advance of the hearing, of any denials of requested witnesses and of the reason or reasons for the denials. If informing the inmate is determined not to be practicable, the inmate shall be informed of any denials and reasons for any denials by the hearing officer at the beginning of the hearing.

(e) If no reason appears from a review of the written proffer of testimony for denial of the request for witnesses, then the disciplinary administrator shall issue a written summons for the appearance of the witness. The appearance of a witness requested by either the reporting officer or the accused inmate shall be voluntary, and neither the request nor the issuance of summons according to this regulation shall compel an appearance. However, issuance of summons by a hearing officer to an inmate or staff

member pursuant to K.A.R. 44-13-403 shall compel an appearance.
(Authorized by and implementing K.S.A. 2006 Supp. 75-5210 and K.S.A. 75-5251; effective Feb. 15, 2002; amended July 13, 2007.)

HEARINGS GENERALLY

44-13-401. Hearing within certain time; notice to inmate; time and place of hearing. (a) Except as otherwise provided in these regulations, the administrative hearing by a hearing officer of the facility to determine the inmate's guilt or innocence and impose a penalty in the event of a finding of guilt shall be held not less than 24 hours or more than seven working days after the service of notice of charge on the inmate, subject to authorized continuances.

(b) Each inmate charged with an offense shall be given advance written notice of the time and place of the disciplinary hearing. This notice shall be given not less than 24 hours before the hearing. Notice shall be given by the disciplinary administrator or other responsible person designated by the warden. This amendment shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 75-5210, K.S.A. 75-5251; effective May 1, 1980; amended May 1, 1981; amended May 1, 1984; amended May 1, 1985; amended May 1, 1986; amended April 20, 1992; amended February 15, 2002.)

44-13-401a. This revocation shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 1990 Supp. 75-5210; effective May 1, 1984; amended April 20, 1992; revoked February 15, 2002.)

44-13-402. Continuing the hearing; recesses; time limits; extensions. (a) The disciplinary administrator or hearing officer may grant one or more continuances or recesses of appropriate and reasonable length upon application of the inmate, reporting officer, the hearing officer, a unit team manager pursuant to K.A.R. 4413-201a, or department of corrections for cause shown.

(b) The hearing officer may also continue the case for a reasonable period, as necessary, subject to the review of the status of the case every 30 days, if any of the following conditions is met:

(1) The inmate or the employee is unable to appear for medical or psychiatric reasons as certified by the facility or other licensed physician or psychiatrist.

(2) There is a delay to await determination of whether the case will go to trial in a court of law or to await the outcome of a trial.

(3) There is an unavoidable delay to await the return of evidence from an analysis laboratory.

(4) The inmate is transferred to or from a facility for diagnostic evaluation, out to court, or to a mental hospital before hearing.

(5) The inmate is on “escape” status. At the hearing officer’s discretion, the case may be dismissed or heard in absentia on the record, unless the inmate has been apprehended and is available at a known location for return to department of corrections custody for the hearing within six months.

(6) The case has been placed upon diversion status pursuant to K.A.R. 44-13-201a.

(c) To obtain a continuance in advance of the hearing, the requesting party shall make the request to the hearing officer or to the disciplinary administrator. If there is a hearing officer appointed for the case, the request shall be forwarded to that officer.

(1) Reasonable extensions may be obtained with the prior approval of the secretary of corrections or the secretary’s designee, in the case of a substantial disruption of order in the facility.

(2) If an inmate has been transferred to another facility, it shall be the responsibility of the warden of the sending facility to grant an extension of the disciplinary case, which shall not exceed 10 working days.

(3) At the discretion of the hearing officer, recesses of appropriate and reasonable length may be declared. (Authorized by and implementing K.S.A. 2006 Supp. 75-5210,

K.S.A. 75-5251; effective May 1, 1980; amended, T-83-23, Aug. 11, 1982; amended, T-84-6, May 1, 1983; amended May 1, 1984; amended May 1, 1988; amended April 20, 1992; amended July 11, 1994; amended Feb. 15, 2002; amended July 13, 2007.)

44-13-403. Conducting the disciplinary hearing. (a) The disciplinary hearing shall consist of the following procedures:

(1) The hearing officer shall initially inform the inmate of the charges and take the inmate’s plea.

(2) Secondly, the hearing officer shall determine guilt or innocence.

(3) Finally, if guilt has been established, the hearing officer shall make a disposition, including the determination and imposition of sentence.

(b) Initially, the hearing officer shall read the disciplinary report to the inmate, including the date, nature of the offense, the reporting officer’s name, and a synopsis of the observation. The officer shall ensure that the inmate understands the charges and that a copy of the disciplinary report was received by the inmate. The officer shall also explain the possible penalties. If the hearing officer finds that the inmate is incapable of self-representation, the hearing officer shall continue the hearing as provided in K.A.R. 44-13-402(b)(1), until the inmate regains the ability for self-representation. For purposes of this subsection, “incapable of self-representation” shall mean that the inmate, due to physical or mental disability, whether temporary or permanent, lacks the present ability to assist in the inmate’s representation in the case. This term shall not include mere illiteracy.

(c) A staff assistant shall be permitted to be with the inmate at all stages of the disciplinary hearing only as provided in K.A.R. 44-13-408. The hearing

officer shall ensure that the inmate has staff assistance when required by K.A.R. 44-13-408.

(d) If the inmate is disruptive or refuses to be present, the hearing may proceed in absentia, and the record shall indicate the reason or reasons for the inmate's absence. A staff assistant shall then be assigned and may ask questions of witnesses, present the argument, or otherwise aid the defendant inmate, at the discretion of the staff assistant and subject to rulings of the hearing officer as otherwise provided in this regulation.

(e) The hearing officer shall entertain and determine any motion for dismissal or objections to holding the hearing, as well as any motions for additional witnesses beyond those identified already in the witness list previously submitted. Additionally, the hearing officer shall advise the inmate of the inmate's rights to proceed to a determination of guilt or innocence, and if necessary, the application of penalties, and to receive staff assistance in certain cases, according to K.A.R. 44-13-408, and of other procedural due process rights.

(f) The hearing officer shall then ask the inmate to plead guilty, not guilty, or no contest. The plea shall be entered if the presiding officer is assured that the plea is made knowledgeably and without threat or promise of reward to the inmate. If the inmate refuses to plead, the hearing officer shall enter a plea of not guilty. A plea of no contest shall be treated in the same manner as that for a plea of guilty. If the inmate pleads guilty or no contest, the inmate shall waive the right to a determination of guilt or innocence, but shall reserve the right to participate in the penalty phase of the hearing to the extent of offering a brief argument in mitigation of the penalty to be imposed. If the inmate pleads guilty or no contest, the inmate shall not be allowed to introduce evidence regarding the inmate's guilt or innocence of the charge or charges.

(g) The hearing officer shall, upon a plea of guilty or no contest, make a finding of guilt and conduct a sentencing hearing, and may impose a sentence.

(h) If the hearing officer finds that the case shall be dismissed, the officer may dismiss the charge on the officer's own motion or on motion of either party. The hearing officer shall give a brief explanation on the record and provide a copy of the explanation to the reporting officer.

(i) Only the relevant facts shall be employed in any determination of guilt or innocence. In the penalty phase, the inmate's entire facility record and other relevant facts, observations, and opinions may be considered.

(j) The hearing officer shall rule on all matters of evidence. Strict rules of evidence, as used in a court of law, shall not be required, but the hearing officer shall exercise diligence to admit reliable and relevant evidence and to refuse to admit irrelevant or unreliable evidence.

(k) The hearing officer shall rule on all matters of assistance for the accused inmate in accordance with these regulations. If the accused inmate is furnished with staff assistance according to K.A.R. 44-13-408, the staff assistant shall be permitted to fully assist the accused and shall be

permitted to question witnesses and present arguments on behalf of the accused inmate, except as otherwise provided by these regulations.

(l) (1) The disciplinary process shall, to the extent possible, discover the truth regarding charges against the inmate. For this purpose, the hearing officer shall be authorized to call and to interrogate any witness, and each inmate, staff member, volunteer, or contract employee called as a witness by the hearing officer shall be compelled to appear. The hearing officer may bring out the facts by direct or cross-examination but shall not act as prosecutor on behalf of the facility or charging officer against the accused inmate, or on behalf of the inmate. Testimony and evidence shall not be received by the hearing officer or introduced outside the presence of the accused inmate, except that the accused inmate shall not be present when the hearing officer reviews any facility security videotape evidence. An inmate shall not be required to be present at the disciplinary hearing as provided in subsections (d), (e), and (m) and K.A.R. 4413-402(b)(5), and as otherwise provided in these regulations.

(2) The hearing shall proceed as follows:

(A) The prosecution shall present its evidence, and the defense shall be permitted to cross-examine, except as otherwise provided by these regulations.

(B) The defense shall present its evidence, and the prosecution shall be permitted to cross-examine.

(C) The prosecution may make a closing argument. The defense may make a closing argument, and then the prosecution may make a short rebuttal.

(m) (1) If the hearing officer determines that the testimony of any inmate will subject that inmate to possible retaliation for having testified, the hearing officer may perform either of the following:

(A) Receive the testimony in confidence without confrontation or cross-examination by the accused inmate, and the witness may be sequestered; or
(B) receive testimony from an investigator who interviewed an inmate informant and relied on the confidential information provided.

(2) The testimony of the inmate witness given under oath shall be examined and tested by the hearing officer. The hearing officer shall closely question the testifying inmate to determine the veracity and weight of the testimony offered. The hearing officer shall complete a credibility assessment form, which shall be available for confidential review by the warden and secretary of corrections.

(3) If the informant inmate does not testify, the hearing officer may establish the reliability of the information provided to the testifying investigators by any of the following:

(A) The testimony of the investigator regarding the reliability of the informant in the past, which shall include specific examples of past instances of reliability;

(B) the testimony of the investigator regarding the truthfulness of details that the investigator has been able to verify through investigation;

(C) corroborating testimony;

(D) a statement on the record by the hearing officer that the hearing officer has firsthand knowledge of the informant and considers the informant to be reliable due to the informant's past record of reliability, which shall include specific examples of past instances of reliability; or

(E) in camera review of material documenting the investigator's assessment of the credibility of the informant.

(4) The accused shall be apprised of the general nature of the confidential testimony, omitting those details that would tend to identify the inmate who gave the confidential testimony or provided confidential information to the testifying investigator. The identity of any confidential witness or of any inmate informant shall not be disclosed to the accused, to any other inmate, or to any staff not required to complete the process. The staff assistant shall be permitted to be present when the board receives testimony from the confidential witness, or investigator, and the staff assistant may ask questions. The inmate's staff assistant shall not disclose the identity of the confidential witness or inmate informant to the accused, to any other inmate, or to any staff not required to complete the hearing process. The testimony shall be recorded for confidential review by the warden and, on appeal, by the secretary of corrections.

(n) The hearing officer may require the accused to explain briefly what the purpose and nature of the testimony of a witness will be. The request to call the witness may be denied or the testimony reasonably and fairly restricted if the testimony meets any of the following criteria:

(1) Relates to something already disposed of;

(2) is clearly irrelevant or immaterial;

(3) is repetitious of other testimony; or

(4) is properly excluded for reasons specified in K.A.R. 44-13405a. The truth of the testimony shall be presumed in making this decision.

(o) A witness request made at the hearing and not previously submitted shall not be permitted unless exceptional circumstances outside the control of the inmate exist and the testimony would most likely affect the outcome of the hearing. The hearing officer shall inform the inmate of any witness deemed waived by the failure to make a timely request.

(p) The hearing officer, in deciding whether or not the inmate is guilty, shall consider only the relevant testimony and report. The accused inmate's correctional and supervision record shall not be considered in determining guilt or innocence. The decision in the hearing shall be based solely on evidence presented as part of the hearing.

(q) Confrontation and cross-examination may be denied by the hearing officer if deemed necessary in any case except class I cases. In class I cases, confrontation and cross-examination may be limited or denied if necessary to protect the safety of an accuser, informant, or witness or if necessary to maintain facility safety, security, and control. Unless there is a security risk endangering some person, the explanation shall be in the record. If there is such a security risk, a written explanation of the reason shall be sent to the warden with a copy to the secretary for confidential review. However, an

inmate held in administrative or disciplinary segregation whose hearing is conducted by telephone, as provided by K.A.R. 44-13-404(e), shall not be permitted to confront any witnesses against the inmate, including the reporting officer.

(r) After the conclusion of the presentation of evidence regarding guilt or innocence or disposition, if the hearing officer needs the charging officer, the accused inmate, or both present to provide further information to clarify facts, both parties shall be present to hear what the other is saying unless exempt under subsection

(m) or (p) above. (Authorized by and implementing K.S.A. 2006 Supp. 75-5210, K.S.A. 75-5251; effective May 1, 1980; amended May 1, 1981; amended, T-83-23, Aug. 11, 1982; amended, T-84-6, May 1, 1983; amended May 1, 1984; amended May 1, 1986; amended April 20, 1992; amended July 11, 1994; amended Feb. 15, 2002; amended July 13, 2007.)

44-13-404. Presence of inmate and presence of charging officer at disciplinary hearings; officer statements in lieu of testimony.

(a) The inmate shall be present at all stages of the disciplinary hearing and disposition except as otherwise provided by these regulations or by law. Subject to the provisions of subsection (e), if the inmate is not present, then a staff assistant shall be assigned in accordance with K.A.R. 44-13-403 and 44-13-408.

(b)(1) In class I cases, the charging officer shall be present in person or by telephone, as determined by the hearing officer, for direct examination and cross-examination, unless excused by the hearing officer or unless the inmate has been transferred to another facility. The hearing officer may excuse the charging officer only if any of the following is determined:

(A) Facility safety or correctional goals would be jeopardized.

(B) The charging officer is absent from duty due to activation for military service.

(C) The charging officer has been separated from employment with the facility for reasons unconnected to investigation of the charges or issuance of the disciplinary report.

(D) The charging officer is otherwise unlikely to be available for testimony within a reasonable time period as determined by the hearing officer, and a continuance pursuant to K.A.R. 44-13-402 either is not applicable or is not appropriate in the judgment of the hearing officer. Facility safety or correctional goals shall not include considerations of mere convenience. If the officer is not present, the officer's report and statement shall be made to the hearing officer in writing under oath. Copies of the report shall be provided to the inmate, and it shall be read aloud at the hearing unless confidentiality is required to protect an inmate accuser, informant, or witness. If the charging officer is excused from appearance, the hearing officer shall document the ground for the excuse and shall likewise document the facts underlying the ground relied upon in the case record.

(2) If an inmate has been transferred to another facility after a disciplinary

report was written in a class I case, the testimony of the charging officer and other witnesses regarding that report may be taken by telephone at the discretion of the hearing officer. Except as provided in K.A.R. 44-13-403(m) and (q), any testimony taken by telephone shall be taken in a manner that can be heard by all those present at the hearing and shall be subject to the same procedures as though the witness were personally present at the hearing. (c)(1) In class II and III cases, the officer's attendance shall not be required unless deemed necessary by the hearing officer. The officer's report and statement shall be submitted to the hearing officer in writing under oath. It shall be read aloud at the hearing, and a copy shall be given to the inmate unless confidentiality is required to protect an inmate accuser, informant, or witness according to K.A.R. 44-13-403(m). If such confidentiality is required, but it is possible to protect the inmate accuser, informant, or witness by editing out certain portions of the report and statement, then those portions shall be edited, and the inmate provided with a copy. The hearing officer may contact the officer, by telephone or radio, to ask questions or clarify the facts while the hearing is being conducted or while the matter is being considered for decision.

(2) In all class II and III cases, if the charging officer requests, the hearing officer shall allow the charging officer to be present. In such a case, the officer shall be present throughout and shall be subject to direct examination, confrontation, and cross-examination unless restricted by the hearing officer according to these regulations.

(d) (1) The officer's statement under oath shall consist of the officer's rendition of all the facts of the case resulting from the charging officer's complete fact investigation. To the best of the officer's ability, it shall show all relevant and material facts that might be used to support both the facility's case against the inmate and the inmate's defense. If the officer is uncertain of a fact, the officer shall state that with respect to the fact. The charging officer may either adopt or defer under oath to any official neutral fact investigation report that might be conducted by another person or may submit the charging officer's own statement in addition to the investigation report.

(2) Confidential inmate testimony may be deleted from the statement in lieu of testimony and reported separately. The hearing officer shall receive any confidential inmate testimony in accordance with K.A.R. 44-13-403.

(e) Hearings for inmates detained or held in administrative or disciplinary segregation status may be conducted by telephone, with the inmate remaining in the inmate's cell and outside the immediate physical presence of the hearing officer and any witnesses, including the reporting officer, at the discretion of the hearing officer. Except as provided in K.A.R. 44-13-403(m) and (q), any testimony taken by telephone shall be taken in a manner that allows the testimony to be heard by all those present at the hearing. The testimony taken by telephone shall be subject to the procedures governing the testimony of any witness personally present at a hearing. A staff assistant shall not be required to be appointed to render assistance to the inmate

unless at least one of the circumstances set forth in K.A.R. 44-13403 or 44-13-408 is present. The inmate shall be permitted to submit written motions, exhibits, or affidavits on the inmate's behalf to the hearing officer to the extent and under the circumstances applicable to documentary presentations under these regulations.

(Authorized by and implementing K.S.A. 2006 Supp. 75-5210, K.S.A. 75-5251; effective May 1, 1980; amended, T-83-23, Aug. 11, 1982; amended, T-84-1, Jan. 5, 1983; amended May 1, 1984; amended April 20, 1992; amended Feb. 15, 2002; amended July 13, 2007.)

44-13-405. (Authorized by and implementing K.S.A. 1983 Supp. 75-5210; effective May 1, 1980; amended May 1, 1981; amended, T-83-23, Aug. 11, 1982; amended, T-84-6, May 1, 1983; amended May 1, 1984; revoked April 20, 1992.)

44-13-405a. Calling witnesses. (a) In determining whether to allow the inmate to call a witness from the facility population or from among facility employees, the hearing officer shall balance the inmate's interest in avoiding loss of good time and assessment of a fine or placement in disciplinary segregation against the needs of the facility. These needs of the facility shall include the following:

- (1) The need to keep the hearing within reasonable time limits;
- (2) the need to prevent the creation of a risk of retaliation and reprisal;
- (3) the need to prevent the undermining of authority;
- (4) the need to limit, to a reasonable level, access to other inmates for the purpose of collecting statements or compiling documentary evidence;
- (5) the need to prevent disruption;
- (6) the need to administer swift punishment;
- (7) the need to avoid irrelevant, immaterial, or unnecessary testimony and evidence;
- (8) the need to reduce or prevent security hazards that could be presented in individual cases;
- (9) the need to use the disciplinary process as a rehabilitative tool to modify inmate behavior;
- (10) the need to prevent the creation of undue risk to personal or facility safety;
- (11) the need to reduce the chances of seriously inflaming tension, frustration, resentment, and antagonism in the relationship between inmates and facility personnel;
- (12) the need to correct the behavior of inmates and develop in them a value system in order to foster their eventual return to the community; and
- (13) the need for the prompt, efficient, and effective resolution of the disciplinary case with accurate and complete fact-finding consistent with the level of process required by law for facility disciplinary cases.

(b) The hearing officer shall have broad discretion in permitting or denying the witness request. In exercising the discretion, the hearing officer shall

balance the inmate's request and wishes against the needs of the facility. The goal of the hearing officer shall be to conduct the fact-finding process in a manner leading to the discovery of the truth.

(c) The hearing officer shall neither abuse the discretion entrusted to that officer nor interfere with the level of process that is reasonably necessary to find the truth.

(d) With the charged inmate's consent, the hearing officer may admit the affidavit of a nonparty witness in lieu of an appearance by the witness. If a witness is denied or cannot attend in a timely manner, the hearing officer may also admit the affidavit of this witness.

(e) If a request to call a witness is denied, a written explanation shall be made on the record unless it would endanger any person. In this case, a written explanation shall be made to the warden with a copy, on appeal, to the secretary of corrections for confidential review. Authorized by and implementing K.S.A. 2006 Supp. 75-5210, K.S.A. 75-5251; effective May 1, 1984; amended May 1, 1987; amended April 20, 1992; amended Feb. 15, 2002; amended July 13, 2007.)

44-13-406. Disposition. (a) The disposition shall be rendered by the hearing officer in an official session with the inmate present unless otherwise provided by law or regulation. The disposition shall be made without unreasonable delay following the hearing, preferably at the conclusion of the hearing.

(b) The disciplinary hearing officer shall sentence the inmate by selecting an appropriate disposition, or appropriate combination of dispositions, from the following options:

(1) Impose a penalty or penalties in accordance with the applicable penalty regulation for that class of offense;

(2) In the instance of two or more offenses, including imposition of previously suspended sentences, in which the penalty has a time component, order whether the sentences are to be served concurrently or consecutively. If the hearing officer makes no specific order in this regard, the sentences shall be computed on a concurrent basis;

(3) impose previously suspended sentences; or

(4) suspend all or part of the sentence imposed for a period of not less than 90 and not more than 180 days.

(c) The hearing officer shall make a recommendation regarding disposition of evidence. The warden shall determine final disposition of the evidence, in accordance with K.A.R. 44-5-111, in the warden's administrative review of the disciplinary report pursuant to K.A.R. 44-13-701.

(d) Upon request, the reporting staff person may be notified of the disposition. (Authorized by and implementing K.S.A. 2006 Supp. 75-5210; effective May 1, 1980; amended, T-83-23, Aug. 11, 1982; amended, T-84-6, May 1, 1983; amended May 1, 1984; amended, T-86-4, March 22, 1985; amended May 1, 1986; amended May 1, 1987; amended April 20, 1992; amended Feb. 15, 2002; amended July 13, 2007.)

44-13-407. (Authorized by and implementing K.S.A. 755210; effective May 1, 1980; amended, T-83-23, Aug. 11, 1982; amended, T-84-6, May 1, 1983; amended May 1, 1984; amended May 1, 1985; amended May 1, 1986; revoked April 20, 1992.)

44-13-408. Assistance from staff. (a) If the hearing officer finds that at least one of the following conditions is met, the hearing officer shall appoint a staff member from an approved list to act as staff assistant to aid the inmate at the disciplinary hearing and to question relevant witnesses:

- (1) The inmate is incapable of self-representation due to physical or mental disability, whether temporary or permanent.
- (2) The inmate is illiterate in the English language.
- (3) The charge is too complex for the inmate to readily comprehend or defend against.
- (4) Testimony or other evidence will be given, either directly or indirectly, by a confidential inmate informant or witness.
- (5) The inmate either refuses to attend or has been removed from the hearing.
- (6) Any other circumstance exists that, in the judgment of the hearing officer, substantially impairs the inmate's ability to participate meaningfully in the inmate's defense.

(b) A list of staff members to aid the inmate as staff assistants shall be made available to the hearing officer by the warden.

(Authorized by and implementing K.S.A. 2006 Supp. 75-5210; effective May 1, 1980; amended, T-83-23, Aug. 11, 1982; amended, T-84-6, May 1, 1983; amended May 1, 1984; amended May 1, 1986; amended April 20, 1992; amended Jan. 3, 1995; amended Feb. 15, 2002; amended July 13, 2007.)

44-13-409. Standard of proof. No finding of guilty shall be made in a disciplinary proceeding unless the institution or facility has produced evidence and testimony sufficient to show guilt of the inmate by a preponderance of the evidence. "Preponderance of the evidence" shall be that standard of proof by which a factual proposition is shown to be more likely true than not. This amendment shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 75-5210; effective May 1, 1980; amended February 15, 2002.)

REPORTS AND RECORDS

44-13-501. Preservation of all reports. No disciplinary reports or summary judgment citations shall be destroyed for any reason. If written in error, or incorrectly written, the report or citation with the case number shall be marked "void" and placed in the disciplinary chronological file at the facility. If the charge was dismissed or a finding of not guilty was made by the disciplinary hearing officer, then the report shall be marked accordingly and

placed in the disciplinary chronological file at the facility.

This amendment shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 75-5210; effective May 1, 1980; amended May 1, 1984; amended April 20, 1992; amended February 15, 2002.)

44-13-502. (Authorized by K.S.A. 1979 Supp. 75-5210; 75-5210(f) effective May 1, 1980; revoked April 20, 1992.)

44-13-502a. Hearing record. A complete written record shall be made of the disciplinary hearing by the hearing officer who conducted the hearing. The written record shall include the following information:

(a) A summary of the disciplinary hearing showing compliance with the provisions of K.A.R. 44-13-403, K.A.R. 4413-404, and K.A.R. 44-13-405a;

(b) a summary of compliance with the provisions of K.A.R. 44-13-101a and K.A.R. 44-13-403 if the inmate pleads guilty or no contest, including attachment of the required waiver form and acceptance of the plea by the hearing officer;

(c) a complete summary of all the evidence and arguments relied on to find the inmate guilty of the charge at the conclusion of the hearing, including the following:

(1) A summary of the testimony or sworn statement of the reporting officer, subject to applicable provisions of K.A.R. 44-13-403;

(2) a summary of the testimony or sworn statements of all other witnesses;

(3) any investigative reports;

(4) a list of all physical evidence;

(5) a list of any witnesses whose testimony was requested and denied and the reasons for that denial;

(6) the reasons for the denial of confrontation and cross-examination of any witness by the inmate; and

(7) the reasons for the denial of any request for assistance by the inmate at any stage of the hearing; and

(d) the disposition of the case provided for in K.A.R. 4413-406, including a summary of the evidence and arguments heard and the reasons for the penalties imposed during the penalty phase of the hearing.

This amendment shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 75-5210, 75-5251; effective April 20, 1992; amended February 15, 2002.)

44-13-503. (Authorized by and implementing K.S.A. 755210; effective May 1, 1980; amended May 1, 1984; amended May 1, 1986; amended May 1, 1987; revoked April 20, 1992.)

44-13-504. (Authorized by K.S.A. 75-5210; effective May 1, 1980; amended May 1, 1984; amended May 1, 1986; revoked April 20, 1992.)

44-13-505. Copy to the inmate. No charge shall be made for the first single copy of the disciplinary case record provided to an inmate. (Authorized by K.S.A. 1979 Supp. 755210, 75-5210(f); effective May 1, 1980.)

44-13-506. Preparation of the record in 10 working days. The record of the disciplinary hearing shall be caused by the warden or designee to be prepared within 10 working days after the rendering of the disposition by the hearing officer, unless extenuating circumstances arise. If such circumstances arise, the record shall be prepared as soon as possible, and the reason for the delay shall be attached in writing and delivered to the inmate upon completion of administrative review by the warden.

This amendment shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 75-5210, 75-5251; effective May 1, 1980; amended April 20, 1992; amended February 15, 2002.)

44-13-507. Docket. (a) A docket of disciplinary cases shall be maintained, showing the following:

- (1) The case number;
- (2) the inmate's name;
- (3) the inmate's number;
- (4) the cell house;
- (5) the offense and its classification; and
- (6) the name and title of the reporting officer. Space shall be left on each line on the docket to enter the plea of the inmate, the findings of the hearing officer, and the sentence imposed.

(b) A copy of this docket shall be maintained in the facility.

This amendment shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 75-5210, 75-5251; effective May 1, 1980; amended April 20, 1992; amended February 15, 2002.)

44-13-508. Disciplinary reports in file. The case disposition report and disciplinary report shall be placed in the inmate's file if there is a finding of guilty. No reference to the case shall be made in the inmate's file if the inmate is not found to be guilty or if the case is dismissed.

This amendment shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 75-5210, 75-5251; effective May 1, 1980; amended May 1, 1984; amended February 15, 2002.)

44-13-509. Disciplinary case log. The disciplinary administrator shall keep a continuous log of all disciplinary reports. The reports shall be numbered and recorded. If any disciplinary report is voided, dismissed, or otherwise terminated, the log and the report shall reflect that fact. No numbers or entries shall be altered, nor any report destroyed.

This amendment shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 75-5210; effective May 1, 1984; amended February 15, 2002.)

SENTENCES

44-13-601. Serving sentence. Each inmate shall begin serving the sentence immediately upon imposition of sentence by the hearing officer, unless the warden or designee determines that space in the disciplinary segregation area is not immediately available or that immediate placement of the inmate in segregation is not otherwise feasible. If either determination is made, the sentence shall be served when the space is available or when placement of the inmate in segregation becomes feasible.

This amendment shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 75-5210, 75-5251; effective May 1, 1980; amended, T-83-23, Aug. 11, 1982; amended, T-84-6, May 1, 1983; amended May 1, 1984; amended May 1, 1985; amended May 1, 1987; amended April 20, 1992; amended February 15, 2002.)

44-13-602. Time not credited for administrative segregation. If the inmate is held in administrative segregation before the disciplinary hearing for some administrative reason, other than merely to await the disciplinary hearing or for investigation of the offense, then that time spent in administrative segregation shall not be credited against the service of the sentence in disciplinary segregation. However, any time during which the inmate is held pending the hearing, which is solely for the purpose of awaiting the disciplinary hearing or awaiting completion of the investigation, shall be credited and subtracted from the inmate's disciplinary segregation sentence, if such a sentence is rendered on the charge. (Authorized by and implementing K.S.A. 1983 Supp. 75-5210; effective May 1, 1980; amended, T-83-23, Aug. 11, 1982; amended T-846, May 1, 1983; amended May 1, 1984.)

44-13-603. Absence from facility. (a) If the inmate is sentenced to disciplinary segregation, restriction to cell, or restriction from privileges and if the inmate is then transferred out to court or to a mental hospital before commencing or completing the sentence, that time spent outside the facility shall not be credited against the service of the sentence. Upon return to the facility, the inmate shall serve the remainder of the sentence, unless the warden determines that the best interests of the inmate or facility warrant that the sentence be suspended. (b) If the inmate is paroled, conditionally released, or released on postrelease supervision before completion of serving the sentence, the inmate may be required to complete serving the sentence upon the inmate's subsequent return to a facility.

(Authorized by and implementing K.S.A. 2006 Supp. 75-5210, K.S.A. 75-5251; effective May 1, 1986; amended April 20, 1992; amended July 11, 1994; amended Feb. 15, 2002; amended July 13, 2007.)

44-13-604. through 44-13-609. Reserved.

44-13-610. Collection of fines. (a) Upon disposition of the case, a fine

may be collected immediately, without further hearing process, from the inmate's trust account. The fine shall be collected only on written order of the disciplinary administrator.

(b) The fine shall be taken from any money that the inmate has credited to the trust account administered by the department of corrections or the contract facility. The fine shall not be deducted or taken from the gratuity, travel, or clothing allowance provided to the inmate upon release.

(c) No inmate, while released from incarceration, shall be required to continue payment on any fine imposed under these regulations. Upon any subsequent admission, the fine may be collected.

(d) If the inmate is transferred to another department of corrections or contract facility before collection, collection may be made by the receiving facility on order of the warden of the sending facility, as approved and confirmed by the warden of the receiving facility. The proceeds of the fine shall be deposited to the inmate benefit fund at the facility where the collection is made. (Authorized by and implementing K.S.A. 2006 Supp. 75-5210,

K.S.A. 75-5251; effective May 1, 1984; amended May 1, 1985; amended April 20, 1992; amended Feb. 15, 2002; amended July 13, 2007.)

APPEALS

44-13-701. Administrative review. (a) In class I and II offense cases, within seven working days after preparation of the record, there shall be a review of the case, without the presentation of further arguments from either side, regarding compliance with the disciplinary procedure. One or more of the following actions may be performed by the warden

(1) Approve the decision;

(2) reinstate a charge that has been dismissed without a factual finding of guilt or innocence and remand the disciplinary case to the disciplinary administrator;

(3) amend the charge in accordance with the provisions of K.A.R. 44-13-202 and remand to the disciplinary administrator;

(4) disapprove the decision and dismiss the case;

(5) reduce the penalty;

(6) suspend all or part of a sentence for a period of at least 90 but not more than 180 days;

(7) remand the case to the disciplinary administrator and order a new hearing;

(8) remand the case to the disciplinary administrator for clarification of the record, and return the case to the warden for further consideration; or

(9) reduce the disciplinary report to a summary judgment and impose one of the following:

(A) Restriction from privileges for not more than 10 days;

(B) a fine not to exceed \$10.00;

(C) extra work without incentive pay for not more than two hours each day,

not to exceed five days;

(D) work without incentive pay, not to exceed five days. This penalty shall not include a fine and shall apply only to ordinary inmate work assignments; or

(E) restitution of not less than \$3.00 and not more than \$20.00.

(b) Disposition of personal property that has been found to be the subject of a violation of one or more disciplinary regulations shall be provided for by the warden in accordance with K.A.R. 445-111 if the property is the subject matter of the offense.

(c) The inmate shall be notified by the warden of the results of the review by way of service of a copy of the disciplinary case record, without unnecessary delay, but in no case later than seven working days after review of the record. The date of review shall not be counted.

(d) Any mistake of law or other clear error may be corrected by the warden, at any time before a decision is made by the secretary in any ensuing appeal by the inmate, with the appeal permitted to continue as to any other point still unresolved by the warden's action as required by K.A.R. 44-13-703.

(e) In class III offense cases that do not include class I or class II offenses, if possible, the reviewer shall not be the warden. An impartial employee of suitable rank and experience shall be designated by the warden to perform the review. A person who was the hearing officer shall not act as reviewing authority, nor shall the reviewer be any person involved in the offense as witness or reporting officer. (Authorized by and implementing K.S.A. 2006 Supp. 75-5210; effective May 1, 1980; amended May 1, 1981; amended, T-84-6, May 1, 1983; amended May 1, 1984; amended May 1, 1987; amended April 20, 1992; amended Feb. 15, 2002; amended July 13, 2007.)

44-13-702. Appeal on the record to the warden of the facility in class III offense cases.

(a) In class III offense cases, the inmate shall have a right of appeal to the warden of the facility and shall not have a right of appeal to the secretary of corrections.

(b) The procedure for appeal to the warden of the facility shall be the same as that for appeal to the secretary of corrections in class I and II offense cases.

(c) The same time to answer the appeal shall be provided to the warden as that provided for the secretary of corrections in class I and II offense cases. This amendment shall be effective on and after February 15, 2002.

(Authorized by and implementing K.S.A. 75-5210; effective May 1, 1980; amended, T-83-23, Aug. 11, 1982; amended, T84-6, May 1, 1983; amended May 1, 1984; amended April 20, 1992; amended February 15, 2002.)

44-13-703. Appeal on the record to secretary of corrections in class I and II offense cases only.

(a) In class I and II offense cases, the inmate shall have the right to appeal on the record to the secretary of corrections from a final decision made by the disciplinary hearing officer, after review of the decision by the warden. If a class III offense is included

among class I or II offenses, the class III offense shall be subject to review by the secretary of corrections. The inmate shall be notified of the right of appeal before or immediately following the warden's review.

(b) The inmate may, on forms provided by the unit team, prepare the inmate's own appeal. The unit team shall ensure that all data necessary to identify and properly log the appeal is provided and forwarded to the disciplinary administrator.

(c) The inmate shall submit the appeal within 15 days of the date of receiving the inmate's copy of the final action.

(d) If the inmate pleads guilty or no contest at the hearing, an appeal of the penalty imposed may be brought, but no appeal of the finding of guilt shall be permitted unless the inmate alleges and shows any of the following:

(1) The inmate was under duress at the time of the plea.

(2) Fraud or substantial error was involved in the inmate's plea of guilty or no contest.

(3) The inmate was not advised of the nature of the hearing and the rights that the inmate would waive by that plea.

(e) The facility's legal counsel may be asked by the secretary to prepare and submit a responsive argument. The responsive argument shall be submitted to the secretary within five calendar days of receipt of the request. The secretary's request for a responsive argument shall not extend the time limits for the secretary's review of the inmate's disciplinary appeal as established in K.A.R. 44-13 704.

(f) Any mistake of law or other clear error may be corrected by the warden at any time before a decision is made by the secretary in any ensuing appeal by the inmate, with the appeal permitted to continue as to any other point still unresolved by the warden's action, as required by K.A.R. 44-13-701.

(Authorized by and implementing K.S.A. 2005 Supp. 75-5210; effective May 1, 1980; amended May 1, 1985; amended May 1, 1987; amended April 20, 1992; amended Feb. 15, 2002; amended July 13, 2007.)

44-13-704. Secretary of corrections' final review on appeal.

(a) Within 15 working days after an appeal is received, all cases appealed to the secretary shall be reviewed by the secretary or designee. Any of the following actions may be taken by the secretary or designee:

(1) Approve the decision;

(2) reinstate a charge that has been dismissed without a factual finding of guilt or innocence and remand the disciplinary case to the disciplinary administrator for a new hearing;

(3) amend the charge in accordance with K.A.R. 44-13- 202 and remand the disciplinary case to the disciplinary administrator for a new hearing;

(4) disapprove the decision and dismiss the case;

(5) reduce the penalty;

(6) suspend all or part of a sentence for at least 90 and not more than 180 days;

(7) remand the case to the disciplinary administrator and order a new

hearing;

(8) remand the case to the disciplinary administrator for clarification of the record and return the case to the secretary for further consideration;

(9) reduce the disciplinary report to a summary judgment and impose one of the following:

(A) Restriction from privileges for not more than 10 days;

(B) a fine not to exceed \$10.00;

(C) extra work without incentive pay for not more than two hours each day, not to exceed five days;

(D) work without incentive pay, not to exceed five days. This penalty shall not include a fine and shall apply only to ordinary inmate work assignments; or

(E) restitution of at least \$3.00 and not more than \$20.00; or

(10) remand the case to the disciplinary administrator with any instructions necessary to ensure compliance with the disciplinary procedure and rules of conduct. The date of receipt shall not be counted.

The secretary's decision shall be final. A copy of the written appeal decision shall be given to the inmate within 15 working days following the secretary's decision. If the appeal is denied, the reason for that decision shall be included in the written appeal decision.

(b) The secretary's review shall determine the following:

(1) Whether there was substantial compliance with departmental and facility standards and procedures;

(2) whether the hearing officer's decision was based on some evidence; and

(3) whether, under the circumstances, the penalty imposed was appropriate and proportionate to the offense. (Authorized by and implementing K.S.A. 2006 Supp. 75-5210; effective May 1, 1980; amended May 1, 1981; amended, T-83-23, Aug. 11, 1982; amended, T-84-6, May 1, 1983; amended May 1, 1984; amended May 1, 1985; amended May 1, 1988; amended April 20, 1992; amended Jan. 3, 1995; amended Feb. 15, 2002; amended July 13, 2007.)

44-13-705. This revocation shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 1990 Supp. 75-5210; effective May 1, 1980; amended April 20, 1992; revoked February 15, 2002.)

44-13-706. Administrative review board to review and make recommendations. The administrative segregation review board established under the applicable internal management policy and procedure of the secretary may review the inmates held in disciplinary segregation. This board may, at any time, recommend to the warden or designee that the disciplinary segregation sentence of an inmate be modified to suspend the remaining segregation time based on a finding of the administrative disciplinary segregation review board that the inmate has maintained exceptionally good behavior while in segregation. The remaining segregation

time of the inmate's sentence may be suspended by the warden or designee, acting on the recommendation of the administrative segregation review board.

This amendment shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 75-5210, 75-5251; effective May 1, 1980; amended April 20, 1992; amended February 15, 2002.)

44-13-707. Harmless error; plain error. None of the following types of errors shall be grounds for granting a new hearing, for setting aside a finding, or for vacating, modifying or otherwise disturbing a disposition or order, unless refusal to take that action appears to the hearing officer or the reviewing authority inconsistent with substantial justice:

(a) An error in either the admission or exclusion of evidence;

(b) an error or defect in any ruling or order;

(c) an error in anything done or omitted by the hearing officer or by any of the facility officials in processing the disciplinary case; or

(d) an error by the inmate in processing the inmate's defense of the case.

Throughout the disciplinary process, the hearing officer or the reviewing authority shall disregard any error or defect in the proceeding that does not affect the substantial rights of the inmate or the facility.

This amendment shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 75-5210, 75-5251; effective, T-83-23, Aug. 11, 1982; effective, T-846, May 1, 1983; effective May 1, 1984; amended April 20, 1992; amended February 15, 2002.)

Article 14.—ADMINISTRATIVE AND DISCIPLINARY SEGREGATION SEGREGATION GENERALLY

44-14-101. This revocation shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 1992 Supp. 75-5210, 75-5251, 75-7552; effective May 1, 1980; amended May 1, 1984; amended Dec. 6, 1993; revoked February 15, 2002.)

44-14-102. This revocation shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 1992 Supp. 75-5210, 75-5251, 75-7552; effective May 1, 1980; amended May 1, 1984; amended Dec. 6, 1993; revoked February 15, 2002.)

DISCIPLINARY SEGREGATION

44-14-201. This revocation shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 1992 Supp. 75-5251, 75-5252; effective May 1, 1980; amended May 1, 1981; amended Dec. 6, 1993; revoked February 15, 2002.)

44-14-202. This revocation shall be effective on and after February 15,

2002. (Authorized by K.S.A. 75-5251, K.S.A. 1979 Supp. 75-5252, 75-5252(c); effective May 1, 1980; revoked February 15, 2002.)

ADMINISTRATIVE SEGREGATION

44-14-301. This revocation shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 1992 Supp. 75-5210, 75-5251, 75-5252; effective May 1, 1980; amended May 1, 1981; amended Dec. 6, 1993; revoked February 15, 2002.)

44-14-302. This revocation shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 1993 Supp. 75-5210, 75-5251, 75-5252; effective May 1, 1980; amended May 1, 1981; amended, T-83-23, Aug. 11, 1982; amended, T-84-6, May 1, 1983; amended May 1, 1984; amended Dec. 6, 1993; amended July 11, 1994; revoked February 15, 2002.)

44-14-303. This revocation shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 1992 Supp. 75-5210, 75-5251, 75-5252; effective May 1, 1980; amended May 1, 1984; amended May 1, 1985; amended Dec. 6, 1993; revoked February 15, 2002.)

44-14-304. This revocation shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 75-5251, K.S.A. 1983 Supp. 75-5210, 75-5252; effective May 1, 1980; amended May 1, 1984; revoked February 15, 2002.)

44-14-305. This revocation shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 1992 Supp. 75-5210, 75-5251, and 75-5252; effective May 1, 1980; amended May 1, 1984; amended Dec. 6, 1993; revoked February 15, 2002.)

44-14-305a. (Authorized by and implementing K.S.A. 75-5210, 75-5251, 75-5252; effective May 1, 1984; amended May 1, 1986; revoked Dec. 6, 1993.)

44-14-306. This revocation shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 1992 Supp. 75-5251, 75-5252; effective May 1, 1980; amended Dec. 6, 1993; revoked February 15, 2002.)

44-14-307. This revocation shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 1992 Supp. 75-5251, 75-5252; effective May 1, 1980; amended May 1, 1987; amended Dec. 6, 1993; revoked February 15, 2002.)

44-14-308. This revocation shall be effective on and after February 15, 2002. (Authorized by K.S.A. 75-5251, 75-5252; effective May 1, 1980;

amended May 1, 1986; revoked February 15, 2002.)

44-14-309. This revocation shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 1992 Supp. 75-5251, 75-5252; effective May 1, 1980; amended Dec. 6, 1993; amended February 15, 2002.)

44-14-310. This revocation shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 1992 Supp. 75-5210, 75-5251, 75-5252; effective May 1, 1980; amended, T-83-23, Aug. 11, 1982; amended, T-84-6, May 1, 1983; amended May 1, 1984; amended Dec. 6, 1993; revoked February 15, 2002.)

44-14-311. This revocation shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 1992 Supp. 75-5210, 75-5251, 75-5252; effective May 1, 1980; amended May 1, 1984; amended Dec. 6, 1993; revoked February 15, 2002.)

44-14-312. This revocation shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 75-5251, K.S.A. 1983 Supp. 75-5210, 75-5252; effective May 1, 1980; amended May 1, 1984; revoked February 15, 2002.)

44-14-313. This revocation shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 75-5251, K.S.A. 1983 Supp. 75-5210, 75-5252; effective May 1, 1984; revoked February 15, 2002.)

44-14-314. This revocation shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 1992 Supp. 75-5210, 75-5251, and 75-5252; effective May 1, 1984; amended Dec. 6, 1993; revoked February 15, 2002.)

44-14-315. This revocation shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 75-5251, K.S.A. 1983 Supp. 75-5210, 75-5252; effective May 1, 1984; revoked February 15, 2002.)

44-14-316. This revocation shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 1992 Supp. 75-5210, 75-5251, 75-5252; effective May 1, 1984; amended Dec. 6, 1993; revoked February 15, 2002.)

44-14-317. This revocation shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 75-5210, 75-5251, 75-5252; effective May 1, 1987; revoked February 15, 2002.)

44-14-318. This revocation shall be effective on and after February 15,

2002. (Authorized by and implementing K.S.A. 1992 Supp. 75-5210, 75-5251, 75-5252; effective Dec. 6, 1993; amended February 15, 2002.)

Article 15.—GRIEVANCE PROCEDURE FOR INMATES AND PAROLEES

PROCEDURES GENERALLY

44-15-101. Inmate or parolee grievance procedure; informal resolution; formal levels. (a) Throughout this article comprising the grievance procedure, all references to inmates shall include parolees, offenders, or both, supervised on either conditional release or post release supervision unless the meaning is clearly to the contrary. References to parolees shall include offenders supervised on either conditional or post release supervision. References to the warden shall include the parole director. The unit team equivalent shall be the parole officer.

(b) Before utilizing the grievance procedure, the inmate shall be responsible for attempting to reach an informal resolution of the matter with the personnel who work with the inmate on a direct or daily basis. An inmate in a facility or parole setting shall contact the unit team members for the attempt at informal resolution. That attempt shall be documented. The facility's inmate request forms may be used to document this process. If this informal resolution attempt fails, the grievance system may then be used. If an emergency exists and a resolution could not be obtained by going to the unit team, the inmate may go directly into the grievance process.

(c) At each stage, all grievances shall be answered in as short a time as possible to insure that delay will not impose additional hardship upon the inmate or unnecessarily prolong a misunderstanding. Grievances of inmates who have since been transferred, paroled, or discharged shall be answered to the extent possible.

(d) The grievance procedure shall incorporate several levels of problem solving to assure solution at the lowest administrative level possible.

(1) Level 1. The inmate shall first submit the grievance report form to an appropriate unit team member of the facility. The parolee shall first submit the form to the parole officer.

(2) Level 2. The inmate shall then submit the grievance report form to the warden of the facility. The parolee shall then submit the form to the regional parole director.

(3) Level 3. If not resolved, the grievance may be next submitted to the office of the secretary of corrections. Either a response to the grievance or referral of the matter to a deputy secretary of corrections for additional investigation, if necessary, shall be made by the warden. Grievances of inmates may be referred by the secretary to the deputy secretary of corrections for facility management. Grievances of parolees may be referred by the secretary to the deputy secretary of corrections for community and field services management.

(e) Inmate grievance report forms and appeal forms shall be made available to all inmates. Grievance forms and appeal forms shall be provided in containers in each inmate living unit and on each segregation wing or tier. The unit team shall assist the inmate in obtaining copies of supporting material necessary to complete the grievance if the number of photocopies requested by the inmate is reasonable.

(f) No staff member shall refuse to sign, date, and return an inmate request form, an inmate grievance form, or a grievance receipt slip showing that the inmate came to that person for assistance.

(g) Each inmate shall be entitled to invoke the grievance procedure. The procedure shall be made accessible to mentally impaired and physically handicapped inmates by the warden. This amendment shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 75-5210,

K.S.A. 75-5251; effective May 1, 1980; amended May 1, 1984; amended May 1, 1987; amended April 20, 1992; amended February 15, 2002.)

44-15-101a. Grievance procedure distribution; orientation; applicability; remedies; advisory committee; investigation. (a)

Grievance procedure regulations shall be distributed or made readily available to all employees and inmates in each correctional facility.

(b) Each inmate and employee, upon admittance to or employment by the facility, shall receive an oral explanation of the grievance procedure, including an opportunity to have questions regarding the procedure answered orally. Explanatory materials and the oral presentation shall be available in any language spoken by a significant portion of the facility's population. To the extent feasible, inmates who do not understand English shall receive an explanation of the grievance procedure in a language in which the inmate is fluent. Mentally impaired and physically handicapped inmates shall receive explanations in a manner comprehensible to them. Parole officers shall provide each parolee with a brief grievance procedure orientation that explains the manner in which the system functions for parolees. Following the explanation, each inmate and each parolee shall sign a statement indicating that the required explanation has been given.

(c) All employees of the facility who are directly involved in the operation of the grievance procedure shall receive training in the skills necessary to operate, or participate in, the grievance procedure.

(d) (1) The grievance procedure shall be applicable to a broad range of matters that directly affect the inmate, including the following

(A) Complaints by inmates regarding policies and conditions within the jurisdiction of the facility or the department of corrections; and

(B) actions by employees and inmates, and incidents occurring within the facility.

(2) The grievance procedure shall not be used in any way as a substitute for, or as part of, the inmate disciplinary procedure, the classification decision-making process, or the property loss or personal injury claims

procedure, or the procedure for censorship of publications specified in the secretary's internal management policy and procedure.

(e) The remedies available to the inmate may include action by the warden of the facility to correct the problem or action by the secretary of corrections to cause the problem to be corrected. Relief may include an agreement by facility officials to remedy an objectionable condition within a reasonable, specified time, or to change a facility policy or practice.

(f) A procedure shall be established by the warden for investigating the allegations and establishing the facts of each grievance. An inmate or employee who appears to be involved in the matter shall not participate in any capacity in the resolution of the grievance.

(g) A copy of the grievance response at each level shall be delivered to the unit team, to the inmate, and to the warden last responding. (Authorized by and implementing K.S.A. 2005 Supp. 75-5210, K.S.A. 75-5251; effective May 1, 1984; amended May 1, 1985; amended Feb. 15, 2002; amended June 1, 2007.)

44-15-101b. Time limit for filing grievance. Grievances shall be filed within 15 days from the date of the discovery of the event giving rise to the grievance, excluding Saturdays, Sundays and holidays. No grievance, regardless of time of discovery, shall be filed later than one year after the event. Any grievance filed later than these deadlines may be returned to the inmate without investigation. The name of the individual returning the grievance, the date of the return, and the reasons for the return shall be noted on the grievance. An inmate may move to the next stage of the grievance procedure if a timely response is not received at any step in the grievance process, unless an extension of time for the response is agreed to in writing by the inmate and staff person answering the grievance. (Authorized by and implementing K.S.A. 75-5210, 75-5251; effective May 1, 1984; amended May 1, 1988.)

44-15-102. Procedure. (a) Grievance step one: preliminary requirement; informal resolution and problem solving at unit team level.

(1) Each inmate shall first seek information, advice, or help on any matter from the inmate's unit team, or from a member of the team. If unable to solve the problem, the unit team shall refer the inmate to the proper office or department. The unit team shall assist those inmates who are unable to complete the form themselves.

(2) If an inmate does not receive a response from the unit team within 10 calendar days, a grievance report may be sent to the warden without the unit team signature or signatures. Each grievance report form shall include an explanation of the absence of the signature or signatures.

(b) Grievance step two: complaint to the warden. If any inmate receives a response but does not obtain a satisfactory solution to the problem through the informal resolution process within 10 calendar days, the inmate may fill out an inmate grievance report form and submit it, within three calendar

days after the deadline for informal resolution, to a staff member for transmittal to the warden.

(1) The inmate shall attach a copy of each inmate request form used to attempt to solve the problem and shall indicate on the inmate grievance report the following information:

(A) A specific complaint that states what or who is the subject of the complaint, related dates and places, and what effect the situation, problem, or person is having on the inmate that makes the complaint necessary;

(B) the title and number, if possible, of any order or regulation that could be the subject of the complaint;

(C) the action that the inmate wants the warden to take to solve the problem;

(D) the name and signature of the responsible institution employee or employees or of the parole officer from whom the inmate sought assistance. This signature shall be on either an inmate request form or the grievance report form. The date on which the help was sought shall be entered by the employee on the form; and

(E) the date on which the completed grievance report was delivered to the staff member for transmittal to the office of the warden.

(2) The staff member shall forward the report to the warden before the end of the next working day and shall give a receipt to the inmate.

(3) Warden's response.

(A) (i) Upon receipt of each grievance report form, a serial number shall be assigned by the warden or designee, and the date of receipt shall be indicated on the form by the warden or designee. The nature of the grievance shall be ascertained by the warden or designee.

(ii) Each inmate grievance shall be returned to the inmate, with an answer, within 10 working days from the date of receipt.

(B) Each answer shall contain findings of fact, conclusions drawn, the reasons for those conclusions, and the action taken by the warden. Each answer shall inform the inmate that the inmate may appeal by submitting the appropriate form to the secretary of corrections.

(C) In all cases, the original and one copy of the grievance report shall be returned by the warden to the inmate. The copy shall be retained by the inmate for the inmate's files. The original may be used for appeal to the secretary if the inmate desires. The necessary copies shall be provided by the warden.

(D) A second copy shall be retained by the warden.

(E) Each facility shall maintain a file on grievance reports indexed by inmate name and subject matter. Grievance report forms shall not be placed in the inmate's institution file.

(F) Any grievance report form may be rejected by the warden if the form does not document any unit team action as required for the preliminary informal resolution process. The grievance report form shall then be sent back to the unit team for an immediate answer to the inmate.

(G) If no response is received from the warden in the time allowed, any

grievance may be sent by an inmate to the secretary of corrections with an explanation of the reason for the delay.

(c) Grievance step three: appeal to the secretary of corrections.

(1) If the warden's answer is not satisfactory, the inmate may appeal to the secretary's office by indicating on the grievance appeal form exactly what the inmate is displeased with and what action the inmate believes the secretary should take. The inmate's appeal shall be made within three calendar days of receipt of the warden's decision, or within three calendar days of the deadline for that decision, whichever is earlier.

(2) The appeal shall then be sent directly and promptly by U.S. mail to the department of corrections central office in Topeka.

(3) When an appeal of the warden's decision is made to the secretary, the secretary shall then have 20 working days from receipt to return the grievance report form to the inmate with an answer. The answer shall include findings of fact, conclusions made, and actions taken.

(4) If a grievance report form is submitted to the secretary without prior action by the warden, the form may be returned to the warden. If the warden did not respond in a timely manner, the form shall be accepted by the secretary.

(5) An appropriate official may be designated by the secretary to prepare the answer.

(d) General provisions: page limits; partial responses; repetitive filings.

(1) At each step of the grievance procedure, the total number of pages of inmate grievance text shall not exceed 10 pages. Text appearing on the front and back of a page shall count as two pages. Any page of text beyond 10 pages shall not be considered when determining the merits of the grievance.

(2) Responding to parts of grievances that are procedurally or substantively appropriate shall not constitute a waiver of defects with the remaining parts of the grievance that are not procedurally or substantively appropriate.

(3) No offender shall abuse the grievance system by repeatedly filing the same complaint.

(A) Each offender who has been identified as being abusive of the grievance system by filing the same complaint on more than one occasion shall be notified in writing of this finding by the warden or secretary's designee responsible for responding to inmate grievance appeals who receives the repeated filing.

(i) The notification shall be given at the time of the repeated filing.

(ii) The repeated filing shall be returned to the offender with the notification but without further substantive response.

(iii) The notification shall contain reference to the matter of which the grievance is repetitive.

(B) If, following this notification, an offender continues to file the same complaint, the warden or secretary's designee may make application to the secretary to impose sanctions to remedy the abuse.

(C) Upon the finding by the secretary of an abusive filing, a fee of not more than five dollars may be imposed on the offender.

(D) Any application for sanctions submitted to the secretary by a warden or secretary's designee for consideration may be referred by the secretary to a designee other than a person responsible for responding to grievance or grievance appeals.

(Authorized by and implementing K.S.A. 75-5210, K.S.A. 755251; effective May 1, 1980; amended May 1, 1984; amended May 1, 1985; amended May 1, 1988; amended April 20, 1992; amended Feb. 15, 2002; amended June 1, 2007.)

44-15-103. Reserved.

44-15-104. Reprisals prohibited. (a) Inmates. No adverse action shall be taken against any inmate for use of the grievance procedure unless the inmate uses the grievance procedure for any of the following purposes:

(1) To communicate a threat to another person or to the security of the facility;

(2) to make a complaint knowing that it is false, malicious, or made in bad faith; or

(3) to commit any unlawful act.

(b) Employees. No adverse action shall be taken against any employee for good faith participation in the grievance procedure. Employees shall be entitled to grieve reprisals for participation in inmate grievance systems by use of the department of corrections' employee grievance system.

(Authorized by and implementing K.S.A. 2005 Supp. 75-5210, K.S.A. 75-5251; effective May 1, 1984; amended June 1, 2007.)

44-15-105. Records. (a) Nature. Records regarding the filing and disposition of grievances shall be collected and maintained systematically by the correctional facility. These records shall be preserved for at least three years following final disposition of the grievance. These records shall include aggregate information regarding the numbers, types and dispositions of grievances, as well as individual records of the date of and the reasons for each disposition at each stage of the procedure. The logs and records shall be in a form and manner prescribed by secretary of corrections policy and procedure. (b) Confidentiality. Records regarding the participation of an individual in grievance proceedings shall be considered confidential and shall be handled under the same procedures used to protect other confidential case records. Consistent with ensuring confidentiality, members of the staff who are participating in the disposition of a grievance shall have access to records essential to the resolution of the grievance. This, however, shall not permit review of inmate files by other inmates. Grievance report forms shall not be placed in the inmate's departmental file. (Authorized by and implementing

K.S.A. 75-5251, K.S.A.1983 Supp. 75-5210, 75-5210(F); effective May 1,

1984.)

44-15-105a. Annual Review. The records regarding the filing and disposition of grievances shall be reviewed annually by the secretary of corrections to determine the effectiveness and credibility of the grievance process. The review shall include an analysis of the types of grievances received, the types and levels of disposition, and any complaints that have been received about the grievance procedure itself. The review shall also include solicitation and consideration of employee and inmate comments on the effectiveness and credibility of the grievance procedure. The secretary of corrections may designate an appropriate deputy secretary of corrections to conduct the review. (Authorized by and implementing K.S.A. 1991 Supp. 75-5210, 75-5251; effective April 20, 1992.)

44-15-106. Emergency procedure. "Emergency grievances" shall mean those grievances for which disposition according to the regular time limits would subject the inmate to a substantial risk of personal injury, or cause other serious and irreparable harm to the inmate. In emergency situations the inmate may bypass the prerequisite of informal resolution if going to the unit team would not obtain a solution to the problem. The inmate shall indicate on the face of the grievance form the nature of the emergency and shall write the word "emergency" at the top of the grievance report form. Emergency grievances shall be forwarded immediately, without substantive review, to the level at which corrective action can be taken. Emergency grievances shall be expedited at every level. The same external review provisions that apply to regular grievances shall apply to emergency grievance. If the person at the corrective action level determines that the grievance is not an emergency, that fact shall be included on the grievance form and the form shall be signed by the person who made that determination. The grievance may then be processed from that point on as a regular grievance. If necessary for a proper response the grievance may be sent for processing at a lower level. (Authorized by and implementing K.S.A. 75-5251, K.S.A.1983 Supp. 75-5210, 75-5210(f); effective May 1, 1984.)

SPECIAL PROCEDURES

44-15-201. Special kinds of problems. (a) If an inmate wants to bring a problem to the attention of a higher authority without going through the grievance procedure, the inmate may address as official mail a sealed letter or grievance report form to the warden of the facility, the secretary of corrections, or the state pardon attorney. However, these letters or grievance report forms should be reserved for the most difficult and complex problems. Generally, any matter that can be internally handled under the inmate grievance procedure shall not be considered as appropriate for the use of the official mail correspondence privilege.

(b) Any department of corrections or facility official who receives a

complaint letter may return it to the inmate with instructions to the inmate to make use of and follow the proper grievance procedure if; in the opinion of the official, the matter is appropriate for handling through the grievance procedure. This amendment shall be effective on and after February 15, 2002.

(Authorized by and implementing K.S.A. 75-5251, K.S.A. 75-5210; effective May 1, 1980; amended February 15, 2002.)

44-15-202. (Authorized by K.S.A. 75-5251, K.S.A.1979 Supp. 75-5210, 75-5210(f); effective May 1, 1980; revoked May 1, 1984.)

44-15-203. Ombudsman. The department of corrections grievance procedure is provided for its inmates and parolees, and shall not in any way replace any other complaint system provided by the state ombudsman for corrections. The functions of the ombudsman for corrections are described in writing and made available to inmates. (Authorized by and implementing K.S.A. 75-5210, 75-5251; effective May 1, 1980; amended May 1, 1987.)

44-15-204. Special procedures for sexual abuse grievances; sexual harassment grievances and grievances alleging retaliation for filing same; reports of sexual abuse or sexual harassment submitted by third parties.

(a) Definitions. For the purpose of this regulation, each of the following terms shall have the meaning specified in this subsection:

(1) "Sexual abuse of an inmate by another inmate" means any of the following acts if the victim does not consent, is coerced into the act by overt or implied threats of violence, or is unable to consent or refuse:

(A) Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;

(B) contact between the mouth and the penis, vulva, or anus;

(C) penetration of the anal or genital opening of another person, however slight, by a hand, finger, or object; or

(D) any other intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or the buttocks of another person, excluding contact incidental to a physical altercation.

(2) "Sexual abuse of an inmate by a staff member, contractor, or volunteer" means any of the following acts, with or without the consent of the inmate:

(A) Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;

(B) contact between the mouth and the penis, vulva, or anus;

(C) contact between the mouth and any body part if the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;

(D) penetration of the anal or genital opening, however slight, by a hand, finger, or object, that is unrelated to official duties or if the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;

(E) any other intentional contact, either directly or through the clothing, of or with the genitalia, anus, groin, breast, inner thigh, or the buttocks, that is unrelated to official duties or if the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;

(F) any attempt, threat, or request by a staff member, contractor, or volunteer to engage in the acts described in paragraphs (a)(2)(A)-(E);

(G) any display by a staff member, contractor, or volunteer of that individual's uncovered genitalia, buttocks, or breast in the presence of an inmate; or

(H) voyeurism by a staff member, contractor, or volunteer.

(3) "Voyeurism by a staff member, contractor, or volunteer" means an invasion of privacy of an inmate by staff for reasons unrelated to official duties, including peering at an inmate who is using a toilet in the inmate's cell to perform bodily functions; requiring an inmate to expose the inmate's buttocks, genitals, or breasts; or taking images of all or part of an inmate's naked body or of an inmate performing bodily functions.

(4) "Sexual harassment" means either of the following:

(A) Repeated and unwelcome sexual advances, requests for sexual favors, or verbal comments, gestures, or actions of a derogatory or offensive sexual nature by one inmate directed to another; or

(B) repeated verbal comments or gestures of a sexual nature to an inmate by a staff member, contractor, or volunteer, including demeaning references to gender, sexually suggestive or derogatory comments about body or clothing, or obscene language or gestures.

(b) Submission of grievances concerning sexual abuse.

(1) Each inmate submitting a grievance concerning sexual abuse alleged to have already occurred shall state that inmate's intentions by writing "Sexual Abuse Grievance" clearly on the grievance form.

(2) Inmates shall not be required to use any informal grievance process, or to otherwise attempt to resolve with staff, an alleged incident of sexual abuse by a staff member, contractor, or volunteer, or a grievance in which it is alleged that sexual abuse by another inmate or by a staff member, contractor, or volunteer was the result of staff neglect or violation of responsibilities.

(3) Any inmate may submit a grievance to security staff, a unit team member, or administrative personnel in person or by utilizing the inmate internal mail system.

(4) Any inmate who alleges sexual abuse may submit a grievance without submitting it to a staff member who is the subject of the complaint. The grievance shall not be referred to a staff member who is the subject of the complaint.

(c) Warden's response.

(1) Upon receipt of each grievance report form alleging sexual abuse, a serial number shall be assigned by the warden or designee, and the date of receipt shall be indicated on the form by the warden or designee.

(2) Each grievance alleging sexual abuse shall be returned to the inmate,

with an answer, within 10 working days from the date of receipt.

(3) Each answer shall contain findings of fact, conclusions drawn, the reasons for those conclusions, and the action taken by the warden. Each answer shall inform the inmate that the inmate may appeal by submitting the appropriate form to the secretary of corrections.

(4) In all cases, the original and one copy of the grievance report shall be returned by the warden to the inmate. The copy shall be retained by the inmate for the inmate's files. The original may be used for appeal to the secretary if the inmate desires. The necessary copies shall be provided by the warden.

(5) A second copy shall be retained by the warden.

(6) Each facility shall maintain a file for grievance reports alleging sexual abuse, with each grievance report indexed by inmate name and coded as a sexual abuse complaint. Grievance report forms shall not be placed in the inmate's institution file.

(7) If no response is received from the warden in the time allowed, any grievance may be sent by an inmate to the secretary of corrections with an explanation of the reason for the delay, if known, with a notation that no response from the warden was received.

(d) Appeal to the secretary of corrections.

(1) If the warden's answer is not satisfactory to the inmate, the inmate may appeal to the secretary's office by indicating on the grievance appeal form exactly what the inmate is displeased with and what action the inmate believes the secretary should take.

(2) The inmate shall send the appeal directly and promptly by U.S. mail to the department of corrections' central office in Topeka.

(3) If an appeal of the warden's decision is made to the secretary, the secretary shall have 20 working days from receipt to return the grievance report form to the inmate with an answer. The answer shall include findings of fact, conclusions made, and actions taken.

(4) If a grievance report form is submitted to the secretary without prior action by the warden, the form may be returned to the warden for further action, at the option of the secretary's designee.

(5) In all cases, a final decision on the merits of any portion of a grievance alleging sexual abuse, or an appeal thereof, shall be issued by the secretary within 90 days of the initial filing of the grievance.

(6) Computation of the 90-day time period shall not include time taken by inmates in preparing and submitting any administrative appeal.

(7) At any level of the administrative process, including the final level, if the inmate does not receive a response within the time allotted for reply, including any properly noticed extension, the inmate may consider the absence of a response to be a denial at that level and may proceed to the next level of appeal.

(8) An appropriate official may be designated by the secretary to prepare the answer.

(e) Imminent sexual abuse.

(1) Each inmate submitting a grievance concerning imminent sexual abuse shall state that inmate's intentions by writing "Emergency Sexual Abuse Grievance" clearly on the grievance form.

(2) Each grievance alleging that an inmate is subject to a substantial risk of imminent sexual abuse shall be treated as an emergency grievance under K.A.R. 44-15-106.

(3) After receiving an emergency grievance alleging imminent sexual abuse, the warden or designee shall provide an initial response within 48 hours and shall issue a final decision within five calendar days. The initial response and final decision shall document the determination whether the inmate is in substantial risk of imminent sexual abuse and the action taken in response to the emergency grievance.

(f) Submission of grievances concerning sexual harassment or concerning retaliation for submission of a report or grievance concerning sexual abuse or harassment.

(1) Each inmate shall be required to use the informal grievance process specified in K.A.R. 44-15-101 and 44-15-102 for grievances concerning sexual harassment or concerning retaliation for submission of a report or grievance concerning sexual abuse or harassment. These grievances shall otherwise be treated and processed according to the ordinary grievance procedure specified in K.A.R. 44-15-101 and 44-15-102.

(2) Any inmate who alleges sexual harassment or retaliation may submit a grievance without submitting it to a staff member who is the subject of the complaint. The grievance shall not be referred to a staff member who is the subject of the complaint.

(3) Each facility shall maintain a file for grievance reports alleging sexual harassment or retaliation for submission of a report or grievance alleging sexual abuse or harassment, with each grievance report indexed by inmate name and coded accordingly. No grievance report form shall be placed in the inmate's institution file.

(g) Time limits.

(1) There shall be no time limit for submission of a grievance regarding an allegation of sexual abuse.

(2) The time limits for any grievance or portion thereof that does not allege an incident of sexual abuse or imminent sexual abuse shall be the limits specified in K.A.R. 44-15-101b.

(h) Third-party submissions.

(1) Third parties, including fellow inmates, staff members, family members, attorneys, and outside advocates, shall be permitted to assist any inmate in filing requests for administrative remedies relating to allegations of sexual abuse and shall also be permitted to file these requests on behalf of any inmate.

(2) If a third party files such a request on behalf of an inmate, the alleged victim shall agree to have the request filed on behalf of the alleged victim. The alleged victim shall personally pursue any subsequent steps in the administrative remedy process.

(3) If the inmate declines to have the request processed on that individual's behalf, the facility shall document the inmate's decision.

(i) Grievances in bad faith. Any inmate may be disciplined for filing a grievance related to alleged sexual abuse only if it can be demonstrated that the inmate filed the grievance in bad faith. In this instance, a disciplinary report alleging violation of K.A.R. 44-12-303 or 44-12-317, as appropriate, may be issued. (Authorized by and implementing K.S.A. 2012 Supp. 75-5210 and 75-5251; effective, T-44-6-28-13, June 28, 2013; effective Sept. 27, 2013.)

Article 16.—REPORTING AND CLAIMS PROCEDURE FOR LOST OR DAMAGED PROPERTY OR FOR PERSONAL INJURY

44-16-101. Reserved.

44-16-102. Reporting loss or damage to property.

(a) Each inmate shall report every loss of or damage to the inmate's own property immediately. In reporting property damage or loss, inmates shall use applicable avenues of redress as established by internal management policies and procedures. These procedures shall be strictly followed.

(b) The facility warden shall not be required to accept any property loss or damage claim unless it is made within 15 working days of the discovery of the loss. The warden shall not be required to accept any claim at all if both of the following conditions are met:

(1) The claim is submitted later than one year and one day after the date of the loss, regardless of when the loss was discovered.

(2) The inmate could have discovered the loss by exercising reasonable effort to know the status of the inmate's property and money. This amendment shall be effective on and after February 15, 2002. (Authorized by K.S.A. 75-5251; implementing K.S.A. 46-920, 75-5254, 75-5255, 75-5257, 75-5210; effective May 1, 1980; amended May 1, 1984; amended February 15, 2002.)

44-16-103. This revocation shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 46-920, as amended by L. 1988,-Ch. 183, Sec. 1, K.S.A. 755210, 75-5251, 75-5254, 75-5257; effective May 1, 1980; amended May 1, 1984; amended, Jan. 2, 1989; revoked February 15, 2002.)

44-16-104. This revocation shall be effective on and after February 15, 2002. (Authorized by K.S.A. 1990 Supp. 75-5210, K.S.A. 75-5251; implementing K.S.A. 1990 Supp. 46-920, 755254, 75-5257; effective May 1, 1980; amended May 1, 1984; amended, Jan. 2, 1989; amended April 20, 1992; revoked February 15, 2002.)

44-16-104a. Inmate claims for personal injury. (a) Each inmate claim for personal injury shall be submitted to the facility and secretary of corrections within 10 calendar days of the claimed personal injury.

(b) Each claim described in subsection (a) shall be submitted and processed in accord with the department of corrections' internal management policies and procedures.

(c) The requirement that the inmate submit the claim as described in subsection (a) shall apply whether or not the inmate pursues a grievance pursuant to article 15 and whether or not the inmate files a claim with the legislative joint committee on special claims against the state.

(Authorized by K.S.A. 75-5251; implementing K.S.A. 75-52,138; effective June 1, 2007.)

44-16-105. Property at own risk. An inmate shall be deemed to own personal property at the inmate's own risk. Loss or damage of personal property shall not provide a basis for recovery on a claim unless the loss or damage directly resulted from the intentional or negligent act or omission of a correctional employee and was reported according to applicable internal management policies and procedures.

This amendment shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 75-5210; effective May 1, 1980; amended May 1, 1984; amended February 15, 2002.)

44-16-106. This revocation shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 75-5251, K.S.A. 1979 Supp. 75-5252; effective May 1, 1980; revoked February 15, 2002.)

44-16-107. This revocation shall be effective on and after February 15, 2002. (Authorized by K.S.A. 1983 Supp. 75-5210, 75-5251; implementing K.S.A. 1983 Supp. 75-5210, 46-920, 75-5251, 75-5254, 75-5257; effective May 1, 1984; revoked February 15, 2002.)

44-16-108. This revocation shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 46-920, as amended by L. 1988, -Ch. 183, Sec. 1, K.S.A. 755210, 75-5251, 75-5254, 75-5257; effective May 1, 1980; effective May 1, 1984; amended Jan. 2, 1989; revoked February 15, 2002.)